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THE GROWTH OF JUDICIAL POWER

ALTHOUGH our written state constitutions have reached such enormous proportions, it should be remembered that there is also a large body of unwritten constitutional law controlling both state and federal governments. It is my purpose here to discuss briefly an important development in the field of the unwritten constitution, namely, the change which has come about in the attitude of the courts toward legislation, especially with reference to the exercise of the judicial power of declaring laws unconstitutional.

Until a few years ago the attitude of the courts on this subject conformed rather closely to the view expressed by Chief Justice Waite in the Sinking Fund Cases: "Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt."[1] The courts still repeat expressions of this character, but it is undoubtedly true that they have departed widely from the doctrines which such expressions embody. The principle that a statute must not be declared invalid unless its inconsistency with the constitution is clear and beyond reasonable doubt has, as Judge Baldwin suggests, become untenable, because such decisions are frequently rendered by a divided court, whose dissenting members must be presumed to have a reasonable doubt regarding the question of unconstitutionality.[2] In fact, it may be said to be true that practically all important decisions declaring statutes unconstitutional are now rendered by divided courts.

[1] 99 U. S. 700, 718 (1878).

[2] Baldwin, American Judiciary, p. 103.

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In the case of Atkin *v.* Kansas,[1] involving a Kansas statute establishing an eight-hour day for state and municipal public works, Mr. Justice Harlan, who delivered the opinion of the court, said:

> No evils arising from such legislation could be more far-reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation, and upon grounds merely of justice or reason or wisdom annul statutes that had received the sanction of the people's representatives.

In Lochner *v.* New York,[2] we find Justice Harlan now in a dissenting opinion, using similar language with reference to the New York law limiting labor in bakeries to ten hours a day. Justice Harlan's expressions are cited not to imply any great change of mind on the part of the Supreme Court of the United States within the period of less than two years intervening between these decisions, but simply as indicative of a change which has been going on for a number of years in the attitude of the courts toward legislation.

The courts have now definitely invaded the field of public policy and are quick to declare unconstitutional almost any laws of which they disapprove, particularly in the fields of social and industrial legislation. The statement still repeated by the courts, that laws will not be declared unconstitutional unless their repugnance to the constitution is clear beyond a reasonable doubt, seems now to have become "a mere courteous and smoothly transmitted platitude."

As an indication of the present attitude of the courts may be mentioned some recent decisions declaring unconstitutional laws affecting the payment of wages by employers. Such acts, when held invalid, have usually been declared unconstitutional as a violation of the right of liberty and property, or as a discrimination between different employments. Thus in Kellyville Coal Company *v.* Harrier,[3] an act forbidding employers engaged in

[1] 191 U. S. 223 (1903).
[2] 198 U. S. 45, 74 (1905).
[3] 207 Ill. 624 (1904).

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mining or manufacturing to make deductions for advances to employees, except when such advances were made in money, was held invalid as depriving both employer and employee of liberty and property, and as a discrimination in favor of farmers, who were not included in the terms of the law. So in Toledo, St. Louis and Western Railroad Company *v.* Long,[1] an act requiring corporations to pay their employees in money was held invalid as depriving corporations of the equal protection of the laws. In Missouri and Texas similar laws, which were not discriminatory but which applied equally to all corporations and individuals, have recently been held unconstitutional as violating the rights of liberty and property.[2] State anti-trust statutes have frequently been held unconstitutional because they excepted from their provisions agricultural products and livestock while in the hands of the producers.[3] In the case of Starne *v.* People,[4] the supreme court of Illinois held unconstitutional a statute requiring mine owners to provide washrooms at the top of each coal mine for the use of their employees, on the ground that this was an improper discrimination in favor of miners.

It is submitted that these decisions have extended very widely the provisions of the federal and state constitutions. The courts seem now to have reached the point of treating as unconstitutional practically all legislation which they deem unwise.[5] The courts will, if they desire, find sufficient reason for declaring a statute invalid either (1) as violating the right of contract, or (2) as depriving persons of liberty and property without due process of law, or (3) as depriving them of the equal protection of the laws. These broad guaranties of the federal and state constitutions have been so extended by judicial interpretation as to give the courts in practically every case the final determination as to whether or not laws shall be enforced,

[1] 169 Ind. 316 (1907).

[2] State *v.* Missouri Tie and Timber Company, 181 Mo. 536 (1904); Jordan *v.* State, 51 Tex. Crim. Rep. 531 (1907).

[3] Connolly *v.* Union Sewer Pipe Company, 184 U. S. 540. See Ernst Freund, Police Power, secs. 310–321, 356, 734.

[4] 222 Ill. 189 (1906).

[5] Ernst Freund in *Green Bag*, vol. xvii, p. 416.

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and the exercise of this power is untrammeled in fields where new legislation may be enacted to apply to changing industrial and social conditions.[1]

Special attention should be called to the present judicial interpretation of the phrase, "equal protection of the laws." The courts lay down a standard of theoretical equality, without much reference to the facts in particular cases, and declare invalid laws which do not square with their *a priori* theories. Thus in the Kellyville Coal Company case, cited above, the court held it improper to exclude farmers from the operation of a law against the payment of employees in store orders, but did not take into consideration the fact that the evils aimed at could hardly exist in the field of agriculture. So state and federal decisions declaring state anti-trust laws unconstitutional, because not made applicable to possible combinations of farmers, do not consider that the nature of the farming industry makes practically impossible among farmers such combinations as are denominated "trusts." It is a serious question also whether the courts have a sufficient basis of fact on their side in declaring unconstitutional laws which discriminate between corporations and individuals with reference to the payment of wages and as regards employers' liability.[2] Inasmuch as abuses are most apt to occur in large industries and as practically all large industrial activities are now conducted under corporate organization, it would seem that corporations as distinct from indi-

[1] As to the extension of the term "liberty" by judicial interpretation, see Charles E. Shattuck in *Harvard Law Review*, vol. iv, p. 365. With reference to the right of contract, attention should be called to the Missouri Tie and Timber Company case, cited above, and to People *v.* Williams, 189 N. Y. 131 (1907). In the latter case the court held invalid as repugnant to the state constitution a law forbidding night work by women. It may be well, however, to call attention to the fact that the attitude of the courts toward legislation is not the same in all states. The courts of some states have often used the argument of public policy to broaden the interpretation of constitutional provisions and to uphold new legal regulations. Yet it does seem to be true that the courts of a number of the important industrial states have usually exercised their power for the purpose of defeating new legislation with reference to industrial and social conditions.

[2] Toledo, St. Louis and Western Railroad Company *v.* Long, 169 Ind. 316 (1907); Bradford Construction Company *v.* Heflin, 88 Miss. 314 (1906); Bedford Quarries Company *v.* Bough, 168 Ind. 671 (1907).

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viduals may well form a separate class with reference to these matters. In a number of cases during recent years the Illinois court has extended very widely the constitutional guaranty of "equal protection of the laws."[1] In Starne *v.* People, cited above, the court refused to consider the question of fact as to whether the mining of bituminous coal is not work of such a character as to justify special provision for wash-rooms, but broadly declared that "the legislature cannot ameliorate the coal miner's condition under the guise of the exercise of the police power and leave others unaided who suffer from like causes." This statement seems to deprive the legislature of all power of determining the question of means for the accomplishment of its objects, and to vest in the courts the whole power of deciding as to the reasonableness and propriety of legislation. Perhaps the furthest step in extending the application of the phrase "equal protection of the laws" has been taken by the Missouri court in State *ex rel.* Johnson *v.* Chicago, Burlington and Quincy Railroad Company.[2] In this case there was under consideration a state constitutional amendment permitting counties and towns to levy road and bridge taxes, but from the provisions of this amendment were excepted St. Joseph, St. Louis and Kansas City. The court held the amendment invalid as a deprivation of "equal protection of the laws" under the federal constitution, on the ground that it was a discrimination in favor of the excepted cities against other parts of the state.[3]

The present attitude of the courts seems fully to justify Professor Pound's criticism of their "narrow and illiberal construction of constitutional provisions, state and federal."[4] The courts have now become practically legislative organs with an

[1] James M. Matheny in *Illinois Law Review*, vol. iii, p. 131.

[2] 195 Mo. 228 (1905).

[3] In 1908 another constitutional amendment with reference to road and bridge taxes was adopted and was made applicable to the whole state.

[4] Roscoe Pound in *Harvard Law Review*, vol. xxi, p. 383. See also People *v.* Brock, 149 Mich. 464 (1907). In this case the court read into the constitution a guaranty regarding criminal trials and then held a law invalid as violating such implied constitutional guaranty.

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absolute power of veto upon statutory legislation which they regard as inexpedient.[1] If we may judge by a recent Indiana case, in which the court declared a statute unconstitutional when the question of constitutionality had neither been raised nor argued before the court, it would seem that judicial decisions of this character may in future be made after less careful consideration than heretofore.[2]

Since 1902 the New York State Library has annually collected in its *Index of Legislation* a list of judicial decisions declaring state laws to be invalid. A statement of the number of occasions on which the judicial veto upon state laws has been exercised is of some interest.

YEARS.	BY STATE COURTS.	BY U. S. SUPREME COURT.
1901–02	72	—
1902–03	48	2
1903–04	57	3
1904–05	52	2
1905–06	103	1
1906–07	94	5

The invasion of the field of public policy by the courts introduces into the law an added element of uncertainty. In this field decisions of the courts necessarily depend not upon any fixed rules of law but upon the individual opinions of the judges on political and economic questions; and such decisions, resting, as they must, upon no general principles, will be especially subject to reversal or modification when changes take place in the personnel of the courts.[3] Moreover there can be no certainty as to whether laws will stand, until after they have

[1] Learned Hand in *Harvard Law Review*, vol. xxi, p. 501. The constitutions of Missouri, Minnesota, Kansas, Alabama and Michigan expressly give the courts supervisory control over the exercise by the legislatures of power to enact local and special legislation. The Michigan provision for this purpose (article v, section 30) reads: "The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question."

[2] Kraus *v.* Lehman, 83 N. E, 714. Clarence R. Martin in *American Law Review*, vol. xlii, p. 641.

[3] Baldwin, American Judiciary, p. 117. Ernst Freund, in *Green Bag*, vol. xvii, p. 416.

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been passed upon by the higher courts. Those able to contest a law immediately upon its first going into effect will avoid its application if it should finally be declared unconstitutional, but those not contesting its constitutionality must obey it until it is declared invalid. The present practice of treating a law as valid until it has been declared unconstitutional by the courts, illogical though it is, can hardly be abandoned so long as courts hold to the doctrine that the constitutionality of a law may be passed upon only for the purpose of deciding a litigated question actually submitted to the court. A decision declaring a statute unconstitutional now works in effect as a repeal operative only for the future, except as to the acts under the statute which are being contested before the courts and as to acts not fully completed when the decision is rendered. The more logical view that all acts done under an unconstitutional law shall be treated as invalid may at some time be taken by the courts; but such a doctrine would introduce even more uncertainty than the present practice; and it would cause important laws to be practically disregarded until they had obtained judicial approval, for one acting upon the faith of a law not so tested would be acting at his peril.[1] Such a step would also consti-

[1] The present legal theory is that a law declared unconstitutional can have conferred no authority or rights. This theory is well expressed by Mr. Justice Field in Norton *v.* Shelby County, 118 U. S. 442; "An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." But the legal practice is different: (1) The federal courts protect contract rights acquired under a state statute declared unconstitutional, and they now seem inclined to protect property rights acquired in a similar manner. (2) Taxes voluntarily paid under an unconstitutional law may not be recovered, and the word "voluntary" is interpreted to cover almost all forms of payment. (3) A person holding an office created by an unconstitutional statute is a *de facto* officer, whose acts are valid with reference to third parties and to the public. (*Cf.* Wallach, "De Facto Office," POLITICAL SCIENCE QUARTERLY, vol. xxii, p. 450.) (4) There is now a tendency on the part of the courts to treat a corporation organized under an unconstitutional law as a *de facto* corporation, and so to protect rights which it may have acquired. (5) Many statutes are of such a character that a decision declaring them unconstitutional can properly operate only for the future. So in State *v.* Beacom, 66 Ohio St. 491, the law under which the city government of Cleveland had operated for more than ten years was declared to be invalid, but the court, far from holding all acts under the law to be void, suspended judgment so as to permit the city to be governed for almost another year under the invalid statute. (6) A declaration that a criminal

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tute the courts more clearly a portion of the legislative machinery than at present, in as much as it would necessarily raise a presumption against the validity of a law until after the courts had held it to be constitutional.

It is in point to inquire as to the competence of the courts to exercise revisory power over legislation.[1] As Professor Pound has remarked:

> Courts are less and less competent to formulate rules for new relations which require regulation. They have the experience of the past. But they do not have the facts of the present. They have but one case before them, to be decided upon the principles of the past, the equities of the one situation, and the prejudices which the individualism of common-law institutional writers, the dogmas learned in a college course in economics and habitual association with the business and professional class must inevitably produce. It is a sound instinct in the community that objects to the settlement of questions of the highest social import in private litigations between John Doe and Richard Roe.[2]

Judges of our higher courts represent the training and opinions of the past and are not proper persons to determine questions of policy with reference to new industrial or social conditions. Whether or not it may be of importance, it is nevertheless true that courts exercise their power to declare laws invalid, where the laws are not clearly repugnant to the constitution, most frequently in cases under the police power involving the protec-

statute is invalid would operate to discontinue proceedings pending under the act, and would entitle persons at the time imprisoned under the act to demand that they be released; but a person who has already served a term of imprisonment under the law would have little if any remedy.

[1] It is beyond the scope of this paper to discuss the effect of judicial supervision upon the quality of the legislative product. It may be well to remark, however, that the legislatures are thus deprived of much of the small share of responsibility which has been left to them by the written constitutions of the states. It is also beyond the scope of this paper to discuss the effect of unwise and careless state legislation in producing the present attitude of the courts.

[2] Roscoe Pound, "Common Law and Legislation", *Harvard Law Review*, vol. xxi, p. 403. This article is an able criticism of the present attitude of the courts toward legislation.

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tion of the public or of laborers.[1] The courts on this account have given weight to popular criticism of the judicial branch of our government as unduly favorable to the so-called vested interests.

In the sixteenth and seventeenth centuries the judiciary stood between the public and the crown. It protected the individual from the state when he required that protection. Today, when it assumes to stand between the legislature and the public and thus again to protect the individual from the state, it really stands between the public and what the public needs and desires, and protects individuals who need no protection against society which does need it. Hence the side of the courts is no longer the popular side.[2]

It has already been noted that state courts can and in many cases do exercise an absolute veto upon state statutes. This veto is usually interposed upon the ground that the statute under consideration is repugnant to the provisions of the state constitution. The states, however, have another legislative process superior to the enactment of statutes by the state legislatures, and may, if sufficient interest be manifested in the measure which the state courts have declared invalid, overrule these courts by placing the substance of the invalidated law in the state constitution, either by an amendment or in connection with a general revision. A tendency to overrule judicial decisions by constitutional alterations has been clearly apparent in recent years.[3] Thus in 1899 the supreme court of Colorado, upon

[1] Many courts have held labor legislation invalid on the specious argument that it deprives the laborers themselves of constitutional rights. See, for example, in Godcharles *v.* Wigeman, 113 Pa. St. 431, an eloquent defense of the laborer's rights of liberty and contract, while the court in its decision extends the phrase "right of contract" in such a manner as to declare unconstitutional legislation beneficial to laborers. The language of the Godcharles case was recently quoted with approval in State *v.* Missouri Tie and Timber Company, 181 Mo. 536. As to the attitude of the courts toward injured employees, see an article by William Hard in *Everybody's*, September, 1908. See also H. R. Seager in POLITICAL SCIENCE QUARTERLY, vol. xix, p. 589.

[2] Roscoe Pound in *Harvard Law Review*, vol. xxi, p. 403.

[3] Attention should be called to the fact that this discussion relates simply to cases in which laws have been declared unconstitutional where their repugnance to the constitution is not clearly apparent. Many cases of course arise in which restrictions im-

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arguments that are at least questionable, held invalid as in violation of the constitution of that state a legislative act limiting a day's labor in mines and smelters to eight hours. In 1902 a constitutional amendment was adopted by the people of Colorado fixing eight hours as a working day in mines.[1] Montana in 1904 and Oklahoma in 1907 introduced into their constitutions provisions limiting a day's labor in mines to eight hours. A series of decisions by the New York Court of Appeals, beginning in 1901, held unconstitutional state statutes regulating hours and conditions of labor on state and municipal public works.[2] An amendment to the constitution of New York, adopted in 1905, provides that the legislature shall have power to "regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed" by the state or any civil division thereof, or on public contracts. California in 1902, Montana in 1904 and Oklahoma in 1907 adopted constitutional provisions establishing an eight-hour day upon state and municipal public works. California, after three unsuccessful attempts of its legislature to enact a primary election law which would meet judicial approval, in 1899 adopted a constitutional amendment upon this subject in order to overcome difficulties raised by the court.[3] Michigan in 1902 by constitutional amendment authorized its legislature to provide by law for indeterminate sentences, thus overcoming a decision of the supreme court of that state declaring such a law unconstitutional.[4] New Hampshire

posed by one constitution are later deemed unwise and are removed either by amendment or constitutional revision, but such cases are not in point. No effort is made here to call into question the exercise of power by the courts where a statute is clearly repugnant to constitutional provisions.

[1] *In re* Morgan, 26 Colo. 415. See also Ernst Freund, Police Power, sec. 155.

[2] People *v.* Coler, 166 N. Y. 1; People *v.* Orange County Road Construction Company, 175 N. Y. 84; People *v.* Grout, 179 N. Y. 417. See also Cleveland *v.* Construction Company, 67 Ohio St. 197 (1902).

[3] E. C. Meyer, Nominating systems, pp. 196, 354. Marsh *v.* Hanley, 111 Cal. 368; Spier *v.* Baker, 120 Cal. 370; Britton *v.* Board, 129 Cal. 337.

[4] People *v.* Cummings, 88 Mich. 249; *In re* Campbell, 138 Mich. 597; *In re* Manaca, 146 Mich. 697. The indeterminate sentence provision is repeated in the Michigan constitution of 1908, art. v, sec. 28.

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in 1903 adopted a constitutional amendment specifically authorizing the taxation of franchises and inheritances, in order to overcome decisions of the supreme court of that state that such taxes were unconstitutional.[1] The constitutional provisions of Mississippi (1890), Virginia (1902) and Oklahoma (1907), abrogating or partially abrogating the common-law fellow-servant rule, do not appear to have been occasioned by judicial decisions, but they were probably intended as precautionary measures, and they seem justified in view of the narrow interpretation given by the supreme court of Mississippi to the constitutional and statutory provisions of that state upon this subject.[2]

A recent writer has said that "if the court is to retain the absolute right to pass in the final result on the expediency of statutes passed by the legislature," some change will be necessary either in the courts or in the constitution.[3] As has been indicated above, a change is rapidly taking place in our state constitutions, and these constitutions are being turned "from fundamental frames of government into statutory codes," largely because of the narrow and illiberal attitude of the courts in interpreting constitutional provisions. This development will probably go further than it has yet gone, and we may reasonably expect provisions to be introduced into state constitutions regarding employers' liability, hours of labor, payment of wages and other matters affecting industrial and social relations, where such provisions may be thought necessary to overcome judicial decisions of the states or may be thought desirable as measures of precaution against decisions which the courts might otherwise render.

State constitutional amendments of this character, made necessary by judicial decisions, are of course binding upon state courts only as regards the power of these courts to declare laws

[1] State *v.* United States and Canada Express Company, 60 N. H. 219; Curry *v.* Spencer, 61 N. H. 624. Journal of New Hampshire Constitutional Convention of 1902, p. 596.

[2] Bradford Construction Company *v.* Heflin, 88 Miss. 314 (1906).

[3] Learned Hand in *Harvard Law Review*, vol. xxi, p. 500.

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invalid as in violation of state constitutions. The state courts are still free to declare state laws or state constitutional provisions invalid as in violation of the federal constitution; and if bound by definite provisions in state constitutions, they will probably base their decisions regarding the invalidity of laws upon the federal constitution.[1] If the highest court of a state declares a state statute or a state constitutional provision invalid as in violation of the federal constitution, its decision is final, for there is no appeal to the United States Supreme Court from a state decision invalidating a state enactment as repugnant to the constitution or laws of the United States. The state courts may on this account limit the power of the states to a very great extent, in matters not already passed upon by the Supreme Court of the United States, and from their decisions there is now no appeal, although, of course, it is possible for the United States by act of Congress to permit appeals to the federal Supreme Court in such cases.

In matters with which the Supreme Court of the United States has had occasion to deal, the state courts are bound by the interpretation which the federal tribunal has placed upon the federal constitution. As regards measures already upheld by the United States Supreme Court, the states will be to a large extent freed from restrictions placed upon them by state judicial decisions declaring laws invalid, and may with impunity enact into their constitutions any provisions which the federal Supreme Court has in its wisdom held proper and expedient. Thus the states may, if they find it necessary to overcome state judicial decisions, insert in their constitutions provisions establishing an eight-hour day on public works[2] or

[1] As, for example, in State *ex. rel.* Johnson *v.* Chicago, Burlington and Quincy Railroad Company, 195 Mo. 228 (1905). Statutory alterations of state constitutions, such as are permitted in Virginia and Oklahoma, will of course be regarded by the courts simply as ordinary statutes. It is a question whether the distinction between state statutes and state constitutions is not breaking down, and whether the state courts are not becoming as free to declare state constitutional provisions invalid because repugnant to the federal constitution as state and federal courts are to declare statutes invalid as repugnant respectively to the state or federal constitutions. Thayer, Legal Essays, pp. 37, 38. See note in *Illinois Law Review*, vol. iii, p. 303.

[2] Atkin *v.* Kansas, 191 U. S. 207.

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in mines,[1] a ten-hour day for females in laundries,[2] but not a ten-hour day for both males and females in bakeries,[3] or a truck act applying to all employers.[4]

The point which I wish to make is that if the highest state court declares a state law invalid as in violation of the state constitution such a decision is final. If, however, legislation upon the matter in question is introduced into the state constitution, the state court, if it again holds the enactment invalid, must declare it to be so because of its repugnance to the federal constitution, and in the latter case the state court is bound by the decisions of the Supreme Court of the United States interpreting the federal constitution with reference to the matter under consideration. For example, if an act establishing an eight-hour day in mines were held invalid as violating a state constitution, such legislation might then be introduced by amendment into the state constitution itself. The state court cannot then declare the eight-hour law for mines invalid as a violation of the federal constitution, because the Supreme Court of the United States has already held such a law not to be unconstitutional.

The state courts will thus continue to possess what is practically an absolute veto on state statutory legislation, and on state constitutional provisions which have not already been approved in substance by the Supreme Court of the United States. By introducing legislation into their state constitutions the states will, however, be entirely free to act within the fields in which legislation has already been upheld by the Supreme Court of the United States. Only legislation which has been passed

[1] Holden *v.* Hardy, 169 U. S. 366.

[2] Muller *v.* Oregon, 208 U. S. 412. Under the Illinois case of Ritchie *v.* People, 155 Ill. 98, and under the New York case of People *v.* Williams, 189 N. Y. 131, it would seem that constitutional enactments will be necessary in these states to permit even such state legislation regarding the labor of women as was upheld by the United States Supreme Court in Muller *v.* Oregon.

[3] Lochner *v.* New York, 198 U. S. 45.

[4] Knoxville Iron Company *v.* Harbison, 183 U. S. 13. Under Missouri Pacific Railway Company *v.* Mackey, 127 U. S. 205, and Railroad Company *v.* Pontius, 157 U. S. 209, it would seem that the states may also safely abrogate the fellow-servant rule with reference to hazardous employments.

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upon by the highest federal court may be safely introduced into state constitutions for the purpose of overcoming state judicial decisions. When introducing legislation into its constitution which has not been so tested, a state will naturally prefer to have the validity of such legislation contested in the federal rather than in its own courts, for it would thus avoid possible annulment of the enactment by the state court and would have the opportunity to obtain a final adjudication by the Supreme Court of the United States.

It may be objected that this simply results in transferring the judicial veto of legislation from one body to another, or rather from several bodies to one, leaving the Supreme Court of the United States to determine finally upon the expediency of all legislation, both federal and state; that it simply results in augmenting still further the powers of the federal government at the expense of the states.[1] This is true, but such a result, while not satisfactory, is better than the present condition, under which a court may block legislation in its own state while all other state courts and the Supreme Court of the United States may permit such legislation as not in conflict with constitutional provisions similar to those of the state in which such legislation is held invalid. One uniform rule, though unwise, is probably better than different rules for each of the forty-six states.

Yet it is hardly proper in this connection to speak of the judicial decisions as establishing rules or principles. When the courts invade the field of public policy and pass upon the expediency or inexpediency of legislation, their decisions necessarily depend not upon any fixed rules of law but upon the individual opinions of the persons composing the court; and though in course of time precedents will be established upon a large number of questions, they will probably not obtain force as announcing or illustrating general principles, but simply as

[1] The Supreme Court of the United States has already in recent years enlarged its jurisdiction with reference to state laws by refusing to follow judgments of state courts interpreting laws of their states and by itself determining whether the state courts have given proper effect to their state laws. See Henry Schofield in *Illinois Law Review*, vol. iii, p. 195, and Ernst Freund in *Green Bag*, vol. xvii, p. 412.

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determining the precise questions upon which the court has passed, on the basis of the facts presented in each case.[1] Anyone attempting to harmonize the cases of Holden *v.* Hardy, Lochner *v.* New York and Muller *v.* Oregon will find it difficult to discover in them any common principle. The tendency of the Supreme Court of the United States to limit itself to the facts of the particular case in matters of this character is especially apparent in Muller *v.* Oregon. In this case a statute was under consideration limiting the labor of women to ten hours a day "in any mechanical establishment, or factory or laundry." The case before the court involved the violation of this law with respect to a laundry, but would seem to have brought the validity of the whole statute into consideration. The court held that the act was not in conflict with the federal constitution "so far as it respects the work of a female in a laundry," thus leaving open for future decision the question of the constitutionality of the Oregon statute in so far as it affects a "mechanical establishment or factory."

It would be better if the courts were to leave the determination of legislative policy to the legislative bodies and were to construe constitutional provisions broadly and liberally. The courts might properly narrow to more nearly their true meaning the broad guaranties of the federal and state constitutions. They might, for example, logically and consistently refuse to declare laws unconstitutional as depriving individuals of the "equal protection of the laws," unless those objecting to the law could show that its operation was clearly unequal and that it imposed a burden out of proportion to the benefit obtained. However, there is little reason to expect that the federal and state courts will in the near future adopt a more liberal attitude toward legislation.

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[1] Learned Hand in *Harvard Law Review*, vol. xxi, p. 501.

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SECTIONALISM IN PENNSYLVANIA DURING THE REVOLUTION

THE colonization of America may in a sense be regarded as a practical manifestation of that discontentment with economic, political and religious conditions which prevailed among so large a number of thinking people in Europe during the seventeenth and eighteenth centuries. Those who were the most discontented were the first to emigrate. Before the close of the seventeenth century a fringe of English settlements was established along the Atlantic seaboard, from Massachusetts to South Carolina, by people whose interests and ideals were already antagonistic to those held by the ruling classes in the mother country. A struggle began at the very outset, therefore, which lasted throughout the colonial period and culminated in the Revolution. During the course of this conflict the stream of immigration was uninterrupted. In some of the colonies, especially in New England, where the newcomers were mostly of English blood, there was rapid assimilation. In others the newer elements pushed back into the interior and came to constitute separate groups of people, who often differed in race and religion from the original founders along the coast. The relations between these new groups and the coast people were very similar to those which existed between the latter and the mother country. The frontier was either governed entirely in the interest of the low country or was denied any adequate government at all. The result was a bitter sectional controversy, which now and then manifested itself in such spectacular episodes as the Regulator uprising in North Carolina, and the raid of the Paxton boys in Pennsylvania.[1]

The conflict was especially bitter in Pennsylvania because the

[1] See F. J. Turner, in Annual Report of the American Historical Association, 1893, pp. 197–227; J. S. Bassett, *ibid.*, 1894, pp. 141–212; W. A. Schaper, *ibid.*, 1900, vol. i, pp. 237–463, especially pp. 245–252; C. H. Lincoln, The Revolutionary Movement in Pennsylvania, 1760–1776, *passim*.

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points of view of the East and West were so radically different. At the beginning of the Revolution, English and Welsh Quakers controlled the city of Philadelphia and the three original southeastern counties of Philadelphia, Chester and Bucks.[1] In adhering to their ideals of self-government, religious toleration and opposition to war they had already come into conflict with the proprietary interests in England and with the western settlers in the province itself. The first considerable non-Quaker element to arrive was the Germans. Their earliest settlement was made at Germantown in 1683,[2] but later they advanced up the valleys of the Schuylkill and the Lehigh and westward to the Susquehanna, leaving an extensive neutral area about the city of Philadelphia. They outnumbered the Quakers as early as 1750, and by 1776 their influence was predominant in the present counties of Northampton, Lehigh, Berks, Schuylkill, Lebanon and Lancaster. Differing from the original settlers in race, language and religion, they ought, according to the ordinarily accepted rules of political science, to have constituted a serious element of danger. That they did not was partly because they had had no experience in practical politics in their own country and partly because the policy of the Quakers was on the whole popular. They were not loath to escape military service and they were glad of the opportunity to worship God in their own peculiar way. Some of their sects, the Mennonites, Schwenkfelders and Tunkers, for example, were as conscientiously opposed to war as the Quakers themselves. The attack upon the proprietors met their approval, not so much because of the fundamental principles of government involved as because it promised a means of avoiding the payment of quit rents. For these reasons they developed no politicians of their own but followed blindly the leadership of the Quakers. As President Sharpless says: "There could be

[1] A few Irish Quakers had also settled in this region, but they had been gradually assimilated by the English and the Welsh. See A. C. Myers, Immigration of the Irish Quakers into Pennsylvania, 1682–1750.

[2] The Germantown settlers are usually called Quakers, and in fact they very soon became associated with that society although it is generally believed that, at the time of their arrival, they were Mennonites.

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seen not infrequently the spectacle of a community of Germans solidly voting for one of a handful of Quakers in their midst."[1]

In the course of time this Quaker-German supremacy was threatened by the intrusion of other elements that were entirely out of sympathy with their ideals. In the city of Philadelphia there developed two distinct aristocratic social groups, one composed of the Church of England families, the other of wealthy Quakers. When the sons of William Penn became Anglicans,[2] the chief appointive offices were given to churchmen, although the Quakers were still able to control the elective assembly. The Quakers appealed to the Germans for support, the Anglicans made a similar appeal to the Scotch-Irish. This newer group of immigrants came for the most part by way of Philadelphia; some of them remained in the city, others established scattering settlements in Philadelphia, Bucks and Berks, still others took possession of the southern and western townships of Chester and Lancaster,[3] but the great majority pushed on beyond the existing frontier. Pennsborough and Hopewell townships in the Cumberland valley were founded in 1735; the triangle which includes the present counties of Perry, Cumberland, York, Adams and Franklin was settled between 1735 and 1760; and after the peace of 1763 the entire southwestern section of the province was occupied. These people were strict Presbyterians; but while they had no love for the churchmen of the East, and no very high regard for the interests of the Penn family, they were led into a temporary alliance with them through a common dislike of the Quakers. Support was also received from a third discontented faction, made up of non-Quaker mechanics, small shop-keepers and day-laborers in the city of Philadelphia. In one form or another the struggle dates back to the early part of the eighteenth century, but the various elements were not organized into distinct political groups until about 1755. Then for nearly twenty years the Quaker-German

[1] Isaac Sharpless, A History of Quaker Government in Pennsylvania, vol. ii, p. 6.

[2] See W. R. Shepherd, A History of Proprietary Government in Pennsylvania, p. 216.

[3] See the excellent maps prepared by Mr. A. C. Myers and Professor M. D. Learned for the Pennsylvania exhibit at the Jamestown Exposition.

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Anti-Proprietary party was arrayed against the Anglican-Scotch-Irish Proprietary coalition. The Proprietary leaders, John Dickinson, William Chew, Richard Peters, the Reverend William Smith and others, were men of conservative instincts, although in that respect they represented only the small eastern wing of the party. They supported the government of the proprietors because they believed that it was preferable to government by the crown; the Scotch-Irish, on the other hand, supported it as a means of lessening the influence of the Quaker oligarchy. The Anti-Proprietary leaders were Benjamin Franklin and Joseph Galloway.

Although the Quakers were in a minority even in their own party, they were able, by preserving a high suffrage qualification in the city of Philadelphia, by keeping down the representation of Philadelphia and the West in the Assembly and by retaining the confidence of the Germans, to dominate the policy of the province until the Revolution. In addition to the usual age and residence qualifications, Markham's Frame of Government in 1696 required electors to "have fifty acres of land, ten acres whereof being seated and cleared, or be otherwise worth fifty pounds, lawful money of this government, clear estate."[1] These provisions were repeated in substance in the acts of 1700, 1706 and 1766, and remained in force until the Revolution.[2] Fifty pounds in personal property was at that time a comfortable fortune, but land was abundant and cheap; consequently the lower classes in Philadelphia were disfranchised while the suffrage in the country was fairly democratic. According to an estimate made by Mr. McKinley, which is based upon a study of tax lists, one person in ten was a qualified voter in the counties and only one in fifty in the city; in other words, about one-half of the total number of adult males in the country were qualified and about one-tenth in the city.[3] In spite of these restrictions

[1] B. P. Poore, The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States, 2d ed., vol. ii, p. 1533.

[2] J. T. Mitchell and Henry Flanders, The Statutes at Large of Pennsylvania, from 1682 to 1801, vol. ii, pp. 25, 213; vol. vii, p. 35.

[3] A. E. McKinley, The Suffrage Franchise in the Thirteen English Colonies in America, pp. 279–283. See also Lincoln, Revolutionary Movement, pp. 77–80, and a letter signed by "Consideration" in *The Pennsylvania Gazette*, October 30, 1776.

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the Quakers may have felt that their hold upon the city was rather precarious, for they kept its representation in the Assembly at a figure far below that to which it was justly entitled under a system based upon population, upon the number of tax-payers or upon the amount of wealth. For example, if Philadelphia county be taken as a standard, the city in 1760 had two votes less than its quota according to the number of taxables and five less according to the amount of taxes paid.[1] It might, however, be argued that the discrepancy did not exist when the original apportionment (two members for the city and eight for each of the three old counties) was made in 1706,[2] and it would have been very difficult to make a change later without considering the claims of the West. In fact it was partly this community of interest between Philadelphia and the West which enabled the Anglican leaders to form a coalition with the Scotch-Irish. It became the definite policy of the Quakers to delay the organization of new counties and to keep down their representation after they were organized. The first additions to the original three counties were Lancaster in 1729, with four members, York and Cumberland in 1749 and 1750, with two members each, and Berks and Northampton in 1752, with one member each.[3] Then for nearly twenty years no further action was taken, although the need of a more efficient local administration in the West urgently demanded the creation of new counties. The organization of Bedford (1771), Northumberland (1772) and Westmoreland (1773) and the granting of additional members to Berks (1771) and to Northampton (1774) increased by five the representation of the frontier,[4] but even then the southeastern section had twenty-six votes in the assembly to fifteen for the remainder of the province, and Philadelphia, Chester and Bucks had a safe majority without counting the two representatives from the city at all. It was not

[1] Lincoln, Revolutionary Movement, pp. 40–52.

[2] Statutes at Large, vol. ii, p. 213.

[3] *Ibid.*, vol. iv, pp. 131–134; vol. v, pp. 70–77, 87–94, 133–140, 140–147.

[4] *Ibid.*, vol. viii, pp. 9, 10, 46–54, 143–152, 314–322, 398, 399. Mr. Lincoln errs in giving February 1, 1770, as the date upon which Berks and Northampton were allowed additional members. Revolutionary Movement, p. 51.

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until March 23, 1776, after the real control of affairs had already begun to pass into the hands of extra-legal committees and conventions, that a general electoral reform bill was finally enacted;[1] and although that measure granted thirteen additional assemblymen to the frontier counties and four to the city of Philadelphia, the change was not as great as might appear, because the Quakers still controlled thirty[2] votes while the German and Scotch-Irish counties had only twenty-eight.

During the early period of the controversy with Great Britain one party looked to the proprietors for relief and the other looked to the king, but both were agreed in opposing the claims of Parliament. The work of the Stamp Act Congress, the denunciation of the Townshend measures and the views expressed by Dickinson in the *Farmer's Letters* met with general approval. When, however, the interests of king, Parliament and proprietors became merged, the sentiment of unanimity disappeared. At the time of the meeting of the First Continental Congress, it is possible to distinguish three fairly well defined political groups. The Quakers, the Germans of the non-fighting sects and a few of the Episcopalians had foresight enough to see that the politicians of New England and the South would bring on a war of rebellion unless they were checked by the more conservative people of the Middle colonies. They were, therefore, inclined to make complete submission and trust to the generosity of the home government for considerate treatment. Their recognized leader was Joseph Galloway. Then there was a second group, composed of Episcopalians, a few of the Quakers and a considerable number of well-to-do Presbyterians and Germans, who were also dissatisfied with the radicalism of the other colonies, but who were determined to remain in the movement and if possible keep it within moderate bounds. Among their leading men may be mentioned John Dickinson, Robert Morris, James Wilson, Charles Thomson, Joseph Reed and Thomas Mifflin. Finally, there was a radical faction, which in-

[1] Statutes at Large, vol. viii, pp. 459–462.

[2] This includes the city, which seems fair enough, inasmuch as the middle and lower classes were still disfranchised. See Lincoln, Revolutionary Movement, p. 240.

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cluded the bulk of the Presbyterians, a few Germans and the mechanics in the city of Philadelphia. Until the spring of 1776 they followed the moderate leaders, but their views were really best represented by Thomas Paine, George Bryan and Daniel Roberdeau.

Owing to the fact that Philadelphia was the seat of government of the confederation, Pennsylvania was more subject to the influence of Congress than any other colony. "Since my first arrival in this city," writes Elbridge Gerry to James Warren, June 25, 1776, "the New England delegates have been in a continual war with the advocates of proprietary interests in Congress and this colony."[1] The agitation of the Adamses and others in favor of the immediate adoption of a declaration of independence and the formation of state constitutions resulted in a new alignment of political parties. The conservatives and a majority of the moderates, represented by Dickinson, Morris and Wilson, were strongly opposed to both measures. They believed that their charter, like those of Connecticut and Rhode Island, could be revised to meet the new conditions, and that the Assembly was the only body which was legally qualified to make the necessary revision. The New England program, on the other hand, was approved by the radicals and by a section of the moderates led by Benjamin Franklin, Thomas McKean, John Bayard and Dr. Rush. On May 20 a large mass-meeting was held in the State House grounds to protest against the right of the Assembly to undertake the alteration of the government, and to demand the election of a constitutional convention without regard to the old restrictions on the suffrage.[2] The details of the plan were worked out by a provincial conference of committees made up of representatives from the various county committees of inspection, which met in Philadelphia from June 18 to June 25.[3] Inasmuch as these local committees were composed exclusively of Whigs,

[1] J. T. Austin, Life of Elbridge Gerry, vol. i, p. 194. See also C. F. Adams, Life and Works of John Adams, vol. i, p. 219; vol. iii, p. 25; vol. x, p. 63.

[2] *The Pennsylvania Evening Post*, May 21, 1776; *The Gazette*, May 22, 1776; Extracts from the Diary of Christopher Marshall, ed. of 1877, p. 72.

[3] Pennsylvania Archives, Second Series, vol. iii, pp. 633–665.

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the radicals were in a large majority, controlling every delegation except that of Philadelphia county. A formal call was issued for a convention to meet in Philadelphia on July 15, and the suffrage qualifications were defined. There were to be two classes of voters: first, all associators, or militiamen, twenty-one years of age, who had resided in the province for one year immediately preceding the election and had been assessed for provincial or county taxes; secondly, all those qualified to vote under the old laws, who would, when required, take an oath or make affirmation renouncing allegiance to George III and binding themselves not to oppose the measures of Congress or the efforts of the approaching convention to establish a free government.[1] The extension of the suffrage to associators and the adoption of these tests would alone have been sufficient to give the radicals control of the convention, but to remove all possible doubt the conference further resolved "that Eight Representatives be sent by the City of Philadelphia, and Eight by each county in the Province to the Convention."[2] In other words, the frontier, which had been inadequately represented under the old régime, was now given an advantage over the more populous communities in the East.

The Convention met promptly on the day appointed, and a committee consisting of three delegates from the original counties, four from the city and ten from the frontier was named to draft a frame of government. Most of the work apparently was done by James Cannon and Timothy Matlack, with the assistance of three other men who were not on the committee or even delegates to the Convention itself, namely, George Bryan, Thomas Paine and Dr. James Young.[3] The result of their labor was a constitution establishing a legislature of one house, a supreme executive council and a judiciary which was entirely dependent upon the legislature. The principle of rotation in office was adopted. A president and a vice-president of the Executive Council were to be elected annually by a joint vote

[1] Pennsylvania Archives, Second Series, vol. iii p., 640. [2] *Ibid.*, p. 643.

[3] See "Consideration" in *The Gazette*, October 30, 1776; Adams, Life and Works of John Adams, vol. ix, p. 623; Alexander Graydon, Memoirs of His Own Time, pp. 285, 286; B. A. Konkle, The Life and Times of Thomas Smith, pp. 76–78.

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of the Council and the Assembly, but their authority was no greater than that of the other members. Provision was also made for a Council of Censors, composed of two members from the city and two each from the counties, to meet every seven years to inquire whether the constitution had been preserved inviolate and to decide whether a convention should be called to consider amendments.[1]

Most of the writers who deal with the period follow blindly the conservative Eastern sources and exaggerate the defects of this constitution without due regard to the difficulties under which it was framed. They do not seem to consider that the Revolution was a social as well as a political movement. Whatever may have been the theory, not one of the thirteen colonies in 1775 was really a democracy. The exercise of political power was the special privilege of the well-born, of the commercial and planting aristocracy of the sea-coast region. In some of the colonies a majority of this class was opposed to the Revolution altogether, so that the few who favored a political separation from England were compelled to rely upon the pioneer democracy of the frontier and the proletariat of their own section. The troubles in Pennsylvania were due to the fact that this moderate revolutionary element was not numerous enough to control its radical allies. The constitution of 1776 was essentially a democratic document, and it was unpopular with the aristocracy mainly for that reason rather than because of any defects in the form of government which it established. So long as the old ruling class was in power no objection was ever made to a unicameral legislature; the check and balance idea was now taken up only as a means of obstructing the progress of democracy, or, to put it in another form, as a means of protecting the few against the tyranny of the many.

The publication of the constitution was followed by a storm of disapproval throughout the eastern part of the state. It was criticised in *The Packet* by "K," "W," "Z.," "Lucius", "Camillus "and "Christophilus Scotus", in *The Journal* by "Brutus" and "Phocion", and in *The Evening Post* by "A Follower of

[1] Poore, Federal and State Constitutions, vol. ii, pp. 1540–1548.

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Christ" and "Hampden"; and was condemned *in toto* in a series of resolutions adopted at a large mass-meeting held in the State House yard October 21 and 22. Replies to these attacks were made by "Consideration", "John Trusshoop" and "Considerate Freeman" in *The Gazette*, by "Cincinnatus", "Demophilus", "A Real Friend to the Christian Religion", "Common Sense" and "De Wit" in *The Packet*, by "Cassius" in *The Evening Post* and by "A Friend to Truth and the People" in *The Journal*.[1] From the issue which was thus presented the two factions came to be known as Constitutionalists and Anti-Constitutionalists. But after all the constitution was merely the pretext and not the cause of political dissension. The Constitutionalist party was composed of Scotch-Irish Presbyterians of the West, most of the Lutherans and Reformed Germans, a few eastern Presbyterians, a few "Fighting Quakers" and the middle and lower classes in the city of Philadelphia; the Anti-Constitutionalists, of the Quakers, the Anglicans, the Germans who belonged to the non-fighting sects and the commercial interests in the city. In other words, there was simply a continuation of the old struggle between the East and the West, between the aristocracy and the democracy, between the Quakers and the Scotch-Irish, the only difference being that it was more distinctly sectional in character. Cordial relations were gradually established between the Episcopalians and the Quakers of the East and between the Scotch-Irish and the Germans of the West. The disfranchisement of the Quakers by the test acts and the unwillingness of the Germans to take an active part in politics threw the leadership of the two parties into the hands of the Episcopalians and the Presbyterians, so that for a time there was a renewal on a small scale of the historical conflict between the Anglican and the Calvinist. Frequent complaints were made that the Presbyterians, who numbered barely one-

[1] *The Packet*, September 24, October 15, 22, 29, 1776, March 18, 1777; *The Journal*, October 9, 1776, March 12, 1777; *The Evening Post*, September 26, October 8, 22, 1776, March 13, 1777; *The Gazette*, October 23, 30, November 13, 20, 1776. See also the diary of James Allen, *Pennsylvania Magazine of History and Biography*, vol. ix, pp. 188, 189, and Konkle, Life and Times of Thomas Smith, chaps. vi and vii.

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fourth of the population, should monopolize most of the public offices. According to "Liberty of Conscience", they held in 1785 over fifty of the seventy-four seats in the Assembly, three of the four supreme court judgeships, the attorney-generalship, the comptroller-generalship, the speakership of the Assembly, the clerkship of the Assembly and several minor offices.[1] The most prominent Constitutionalist leaders from 1776 to 1790, George Bryan, General Joseph Reed, Colonel John Bayard and the Reverend John Ewing of Philadelphia, Robert Whitehill of Cumberland county, William Findley of Westmoreland, and John Smilie of Lancaster, Westmoreland, and Fayette, were all Presbyterians, and their party was popularly known as the Presbyterian party. In *The Gazette* for February 2, 1785, "Catholic" tells the story of a new member of the Assembly who put up his horse at a tavern and then inquired where Bryan lived, informing his host "that his congregation had put him into the Assembly and had ordered him, as he was a new hand and did not understand politics, to go to Mr. Bryan and ask his directions how to vote." Throughout the entire period from 1776 to 1790 Bryan was the most influential leader of the party, although during the earlier years the old traditions of family rule made it necessary for him to give way to men of less ability but more aristocratic birth, such as Thomas Wharton, Junior, Joseph Reed and John Bayard. The "Fighting Quaker" or "Free Quaker" element was represented by Timothy Matlack, Christopher Marshall, Owen Biddle and Dr. James Hutchinson. The Anti-Constitutionalist leaders, on the other hand, were predominantly Episcopalian, as, for example, Robert Morris, James Wilson, Thomas Smith and the Reverend William Smith. John Dickinson and Thomas Mifflin had been associated with the Quakers, and the Mühlenberg brothers were German Lutherans.

The political differences were also based upon conflicting economic interests. The West was exclusively an agricultural section, whereas the Southeast was dominated by the mercantile and financial classes of the city of Philadelphia. If the trans-

[1] *The Gazette*, January 26, 1785.

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portation facilities had been good, this would not in itself have constituted a serious obstacle to union, but, unfortunately, the roads were few in number and badly built and the river navigation was obstructed by innumerable shoals and rapids. At the beginning of the Revolution there was a wagon road from Reading to Philadelphia, and two roads from the Susquehanna to the Upper Schuylkill, one running from Fort Augusta (Sunbury) to Hughes's saw-mill, about thirty miles above Reading, and the other from a point just below Fort Augusta direct to Reading itself.[1] In the lower Susquehanna valley the chief thoroughfare to Philadelphia was the king's highway through York and Lancaster. South of this were the great Conestoga road, which ran into the king's highway near Downingtown, and the Newcastle and Conestoga whiskey road, which intersected the Nottingham and New Garden road near Elk creek just north of the Maryland line and thus afforded communication with Philadelphia by way of Kennett (Square) and Chester. From Harris's Ferry (Harrisburg) there was a road to Reading, another to Lancaster and a third—the Paxton road—which passed through Ephrata and joined the main York-Lancaster highway at Edward Kennison's plantation in Whiteland township, Chester county.[2] Before the close of the colonial period two plans had already been suggested for an all-water route between Philadelphia and the Susquehanna: one from Philadelphia to Reading by way of the Schuylkill, from Reading to Myer's Town by way of Tulpehocken Creek, from Myer's Town to Lebanon by way of a lock canal and from Lebanon to Middletown by way of the Quittapahilla and Swatara Creeks; the other by way of a canal between the headwaters of Delaware Bay and the Chesapeake. William Penn may have had the former route in mind when he stated in 1690 that a settlement

[1] Statutes at Large, vol. viii, pp. 56–58; Pennsylvania Archives, First Series (Hazard), vol. iv, pp. 362, 363; Colonial Records, vol. ix, p. 651.

[2] Colonial Records, vol. iii, pp. 419, 420, vol. iv, pp. 182–185; Maps of Nicholas Scull (1759), William Scull (1770), Reading Howell (1792), and others in Pennsylvania Archives, Third Series, Appendix i–x; H. F. Eshleman, Map of the Earliest Highways Leading from the Delaware and Schuylkill Rivers to the Susquehanna River and its Branches (Lancaster, 1907).

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which he proposed to establish on the Susquehanna could be connected with the east "by water, by the benefit of the river Schoulkill; for a *Branch* of that river lies near a *Branch* that runs into the Susquehannagh River and is the *Common Course* of the *Indians* with their *Skins* and *Furrs* into our Parts."[1] This route was surveyed in 1762 by David Rittenhouse and in 1769–1770 by a committee of the American Philosophical Society, composed of Dr. William Smith, John Lukens and John Sellers. Through the efforts of Thomas Gilpin the American Philosophical Society was also induced in 1769 and 1770 to appoint similar committees to explore the other route.[2] The merchants of Philadelphia manifested no special interest in either scheme, however, and when the war came on they were forgotten. The Union canal was not finally completed and thrown open to traffic until 1828 and the Chesapeake and Delaware not until 1829.

The counties of Philadelphia, Bucks, Berks and Northampton and the eastern and northern parts of Chester and Lancaster were economically dependent upon the city of Philadelphia. The Berks, Northampton and upper Bucks settlers floated their heavy produce down the Lehigh, the Delaware and the Schuylkill on rafts during the spring freshets and sent back their return cargoes by wagon. In the Susquehanna valley, on the other hand, from the northernmost settlements down to the Maryland line, the bulk of the produce was marketed in Baltimore.[3] Owing to the difficult character of the ascending navigation, however, the north and west branch settlers and some of those in the main valley above the Conewago falls were in the habit of selling for cash and purchasing their return merchandise in

[1] Hazard, Register of Pennsylvania, vol. i, p. 400. Mr. Eshleman thinks that Penn's words refer to a route further south by way of French and Conestoga Creeks.

[2] *Ibid.*, 409; Tanner, Canals and Railroads of the United States, p. 95; Transactions of the American Philosophical Society, 2nd ed., vol. i, pp. 357–364; J. Gilpin, A Memoir on . . . the Chesapeake and Delaware Canal (Washington, 1821), pp. 3, 4; William Smith, Historical Account of . . . Canal Navigation in Pennsylvania (Philadelphia, 1795), p. 67.

[3] The produce was floated down the river on rafts to the Conewago falls and was then transported by wagon either to tide-water for reshipment or directly to Baltimore itself.

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Philadelphia. Nearer the Maryland border the trade was kept up in both directions. In a memorandum of 1770, entitled "Some brief Observations offered to the intended meeting,[1] to consider of the Best mode of saving the trade of this province, which is going from its metropolis to Baltimore," Thomas Gilpin states that "the country most in danger is the south part of Cumberland, York and Chester counties;"[2] to which he might also have added the southern half of Lancaster. "In the former very imperfect and obstructed state of its navigation," says an anonymous pamphleteer of 1796, "much of the produce of Pennsylvania passed down this river on its way to the Baltimore market."[3] About 1829 another writer asserted that the trade of the Susquehanna, "composing the whole of the produce of the north and west of our state, has been enjoyed by Baltimore, from the foundation of that city, or say for fifty or sixty years."[4]

From the point of view of politics, this trade rivalry between Philadelphia and Baltimore was an important factor in the development of sectionalism. A correspondent of *The Independent Gazetteer*[5] wrote:

> Happy would it be for Pennsylvania if her boundaries were comprised by the Susquehanna; we should be more compact and more united. The back counties are a dead weight upon us; they pay very little towards the support of government; and some of their members are, from mere local prejudices and narrow sentiments, continually thwarting every measure proposed for the public good, so that their own particular ends are answered.

More to the point is the complaint of "A Friend to the Prosperity of both Sides of the Susquehanna":

[1] Probably a joint committee of merchants and representatives of the American Philosophical Society.

[2] Gilpin, Chesapeake and Delaware Canal, p. 11, Appendix.

[3] A Description of the River Susquehanna, Philadelphia, 1796, p. 40.

[4] Clipping, probably from *The Aurora*, in the Matthew Carey collection of newspaper clippings (Ridgway Branch of the Philadelphia Library Company), series entitled Select Scraps, vol. iii, p. 15. See also *ibid.*, vol. xxii, pp. 147, 148.

[5] March 12, 1787.

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But it unfortunately happens that the trade and commerce of Pennsylvania is cut in two divisions. One part comes to Philadelphia and the other to Baltimore. Were not this the case, there would be no opposition about a Bank, but what arose from the narrow motives of party spirit, in which men will often oppose a general good, because they were not the persons who did it.[1]

Thomas Paine gives the same testimony:

The commerce and traffic of the Back Country members and the parts they represent goes to Baltimore. From thence are their imports purchased, and thence do their exports go. They come here to legislate and go there to trade. . . . What advantage persons thus situated can propose to themselves from a destruction of the bank at Philadelphia is not easy to perceive. . . . If one part of the state is thus to go on in opposing the other, no great good can come to either.[2]

Another factor in the development of sectionalism was the unequal distribution of the financial burdens of the state. The *per capita* rate of taxation was higher in the East than it was in the West, not only because the East was more wealthy and because it contained a greater number of non-associators, who had to pay double, but also because it contributed a much larger proportion of its actual assessment. In 1779 there were 37,887 taxables in the city of Philadelphia and the six counties east of the Susquehanna river—Philadelphia, Bucks, Chester, Lancaster, Berks and Northampton—and 16,796 in the six counties west of the river—York, Cumberland, Bedford, Northumberland,[3] Westmoreland and Washington. During the five fiscal years from March 20, 1778, to March 20, 1783, the city and the eastern counties paid 96+ per cent of their quotas of the taxes assessed in continental currency, 78— per cent of their quotas of the taxes assessed in state currency, and 45— per cent of the taxes assessed in specie. The corresponding figures for the western counties were 48+, 17— and 9—. Of the total amount actually paid into the treasury the city and the

[1] *The Gazette*, November 29, 1786.

[2] *Ibid.*, March 7, 1787, over the signature "Common Sense."

[3] Classed with the western division because the greater part of its territory lay on that side of the main (north) branch of the river.

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eastern counties contributed 86+ per cent of the continental currency, 94— of the state currency, and 94+ of the specie. In other words, the East contributed more than ninety per cent of all the taxes and the city of Philadelphia and the three original Quaker counties alone more than sixty per cent.[1]

If they constituted so small a minority of the population of the state and possessed so small a share of its wealth, how, it may be asked, were the people of the West able to maintain their political supremacy? The answer is simple. They merely resorted to the old familiar Quaker weapons, inequality of representation and restrictions upon the suffrage. To the city and to each of the counties were allotted six assemblymen, without regard to population, until 1779, when an apportionment was to be made based upon the number of taxables. Equal county representation in the supreme Executive Council and in the Council of Censors was established as a permanent principle. In the matter of suffrage, the constitution provided that every freeman twenty-one years of age who had resided in the state for one year before the day of election and had paid taxes during that time could qualify as an elector. The liberality of this provision was, however, subsequently neutralized through the passage of a series of legislative test acts. By the acts of June 13, 1777, and April 1, 1778, all white male inhabitants of the state above the age of eighteen were required, under penalty of disfranchisement and exclusion from office, in addition to other disabilities, to take an oath (or make affirmation) renouncing allegiance to George III, acknowledging allegiance to the state of Pennsylvania, and promising that they would not do anything prejudicial or injurious to the freedom and independence of the United States, as declared by Congress.[2] The act of October 1, 1779, provided that all of those who had not already qualified, and who would not, within a definite period, varying in the different counties from twenty to sixty days, take an ironclad oath (or affirmation) that they had not since the adoption of the

[1] Minutes of the First Session of the Ninth General Assembly, pp. 49, 50, 71, 72. Pennsylvania Archives, Fourth Series, vol. iii, pp. 1002, 1003; "Examiner" in *The Independent Gazetteer*, January 22, 1785.

[2] Statutes at Large, vol. ix, pp. 110–114, 238–245.

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Declaration of Independence "directly or indirectly aided, assisted or abetted or in any way countenanced the King of Great Britain, his generals, fleets or armies or their adherents in their claims upon these United States" should be forever excluded from the exercise of political privileges.[1] In other words, it provided a test which was not only *ex post facto*, but which could not be taken at all after a specified date. According to the estimates of "Constitutionalist"[2] and "De Witt",[3] only one-fifth or at most one-fourth of the adult male inhabitants were able and willing to comply with these requirements. Cato's figures are more exact. The population of the state in 1785 was 350,000. On the assumption that the average family consisted of six members, he gives the number of adult males as 60,000, of whom 18,000 were jurors and 42,000 were non-jurors.[4] In parts of the southeastern counties there were not enough qualified citizens to fill the local offices. Byberry township in Philadelphia county, for example, had only three legal voters in 1779, and all the local officials were non-residents, although there were eighty-seven adult males assessed for the state and county taxes.[5]

Bearing in mind these facts in regard to the composition of the two parties and the methods adopted by the West to maintain itself in power, let us consider the more important political issues of the time. The religious factor is shown most clearly in the struggle for the control of the College of Philadelphia. That institution, founded in 1749 as an academy and charitable school, had for many years been subject to Episcopalian influence. At the beginning of the war the board of trustees was reorganized, Robert Morris, James Wilson, John Cadwalader and other men of their type being appointed to replace those members who had gone over to the enemy. The board thus became entirely Whiggish in character, although it still continued to be Episcopalian. In addition, nearly every mem-

[1] Statutes at Large, vol. ix, pp. 404–407.

[2] *The Packet*, February 16, 1779.

[3] *Ibid.*, March 11, 1779.

[4] *The Gazette*, January 26, 1785.

[5] Westcott History of the Test Laws, pp. xxxviii, xxix; Pennsylvania Archives, Third Series, vol. xiv, pp. 575–578, vol. xv, pp. 14–16.

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ber was opposed to the constitution of 1776, some of them even refusing to take the oath of allegiance. This condition of affairs naturally gave rise to some complaints, but probably there would have been no serious trouble if Dr. William Smith, the provost of the college, had not, through his fondness for gossip and political controversy, become involved in a personal quarrel with President Reed. It would perhaps be safe to conclude that Reed was the moving spirit in the final attack, although George Bryan led the fight in the Assembly and Dr. John Ewing, the senior pastor of the Presbyterian church in Philadelphia, played a prominent part in organizing the movement on the outside.[1] Reed's motives were chiefly personal, Bryan's were political, and Ewing's were both personal and religious—personal, because he expected to secure the provostship for himself; religious, because he hoped that the result would be a victory for Presbyterianism. A motion for the appointment of a committee to bring in a bill to alter the charter was carried in the Assembly October 2, 1779, by a vote of thirty-three to eighteen. In the affirmative were thirty-one Constitutionalists and two Anti-Constitutionalists, or, as they were now called, Republicans; in the negative, three Constitutionalists and fifteen Republicans. Of the five who voted against the majority of their respective parties, four were Germans, probably Lutherans, and consequently were not much interested in the religious side of the controversy. The final statute, which was passed November 27, abolished the old board of trustees, dropped the title of college, and established the University of Pennsylvania. The new board consisted of three classes of members: first, six representatives of the government *ex officio;* second, the senior ministers in standing of the Episcopalian, Presbyterian, Lutheran, German Calvinist, Baptist and Roman Catholic churches in Philadelphia; and third, certain prominent citizens named in the statute itself.[2]

[1] See the letter by Dr. Rush in *The Freeman's Journal*, February 23, 1785.

[2] Journals of the House of Representatives, vol. i, pp. 319, 364, 375, 376, 380–385, 392, 395, 396, 402–405; Statutes at Large, vol. x, pp. 23–30; G. B. Wood, Early History of the University of Pennsylvania, Third Edition (1896), pp. 1–93, 203–261.

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The general opinion in regard to this legislation was probably that expressed by James Tod in a letter written to Dr. Charles Nisbet of Edinburgh in 1784. "Some time ago," writes Tod, "Dr. Smith and all of the Episcopal people were turned out of the College of Philadelphia and the direction and management put into the hands of Presbyterians."[1] This statement was not strictly true. Nearly one-third of the new board of trustees were Episcopalians, although that denomination constituted a much smaller proportion of the total population of the state. Very few changes were made in the faculty. Two of the five professors in 1785 were Presbyterians, two were Episcopalians, one was a Lutheran. At the same time, however, we must not forget, in that day of small colleges, the enormous influence which the head of an institution could exert over his students. One of the first acts of the new board was to dismiss Dr. Smith from his position as provost and to appoint as his successor one of their own number, Dr. Ewing, who, as we have seen, was the senior minister of the Presbyterian church in the city of Philadelphia. So that, although it was nominally established on a broad and liberal foundation, the university of the new régime was in reality as strongly subjected to Presbyterian influence as the college of the old régime had been to Episcopalian influence. But after all the question was quite as distinctly political as it was religious. The old trustees gave offense, primarily not because they were Episcopalians but because they were the opponents of the constitution of 1776. The new trustees were nearly all Constitutionalists, and a majority of them held public office.

In addition to this affair, party feeling was further intensified by the enforcements of the test acts, by the treason trials, by the Conway cabal, by the dissatisfaction with General Arnold's military administration of Philadelphia, by the Silas Deane controversy and by various other questions of minor importance. At bottom, however, the problem was economic. Taxes were heavy, large numbers of men were drawn from other employ-

[1] *The Packet*, February 9, 1785. Dr. Nisbet subsequently became president of Dickinson college.

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ments to serve in the army, and business in general was unsettled through the depreciation of the currency and the operation of the legal-tender laws. Under an ordinance of the constitutional convention of August 1, 1776, and a legislative act of January 29, 1777, the continental bills of credit, the colonial issues of 1764, 1766, 1773 and 1775, and the so-called "resolve money" of 1775–1776 were made full legal-tender for all future debts and, under certain limitations, for debts which had already been contracted. Although the colonial bills were called in by the acts of March 23 and March 25, 1778, the advantage was more than offset by an issue of £200,000 in legal-tender state currency on March 20, 1777.[1] Creditors were compelled to permit the settlement of debts in depreciated money, but they could not be compelled to make further loans while the depreciation was still in progress. Specie was hoarded, tradesmen refused to sell their wares at *ante-bellum* rates, and prices as expressed in paper money rose to fabulous heights. Accepting the popular view that prices were kept up artificially by the Tories in order to discredit the continental currency, the Constitutionalist leaders recommended government regulation. The Republicans, on the other hand, agreed with the merchants and importers in fixing the blame on the legal-tender laws and in urging their repeal. Congress approved of the former plan, in resolutions of February 15 and November 22, 1777, and advised the states to agree upon some uniform principles of action. A regulating act was passed, April 1, 1778, but it met with strong opposition, was suspended May 25, and, in accordance with a new resolution of congress of June 4, was repealed on September 9. Laws were also enacted January 2, 1778, to prevent forestalling; September 7, 1778, to prohibit the exportation of provisions; and November 27, 1778, to prohibit for a limited time the making of spirituous liquors from wheat, rye or other grain.[2]

[1] Statutes at Large, vol. ix, pp. 8–11, 34–40, 97–103, 225–227, 250–253; Votes and Proceedings of the House of Representatives of the Province of Pennsylvania, pp. 594, 650, 724.

[2] Statutes at Large, vol. ix, pp. 177–180, 236–238, 249, 250, 272–274, 283, 284, 297–299; Journals of Congress (Philadelphia, 1800), vol. iii, pp. 50, 417, vol. iv, p. 236.

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Serious efforts were made to enforce these legislative panaceas, but they proved to be ineffective. Prices continued to advance, business became more disturbed, and intense suffering prevailed, especially among the middle and lower classes in the city of Philadelphia. The popular feeling that the Tories were responsible for the troubles was strengthened by the acquittal, on April 25, 1779, of David Frank, a prominent non-juror who had been charged with giving information to the enemy in New York.[1] At a town meeting held in the State House yard May 25, under the presidency of General Roberdeau, a committee of thirty-three was selected to regulate prices and to check the depreciation of the paper currency. Colonel William Henry, William Bradford and Doctor James Hutchinson were named as chairmen.[2] Four days later provision was made for a committee of eleven to seek out all disaffected persons then in Philadelphia or its immediate neighborhood and to report their cases to the committee of thirty-three.[3] Similar committees were organized in Lancaster county, June 11, in Chester, June 14, in Philadelphia (county), June 19, and in all of the other counties before the close of the summer. The Wilmington committee, appointed June 2, was based on the Philadelphia model.[4]

During the entire summer of 1779 the government of the state, both central and local, was practically in the hands of these extra-legal organizations. Their methods were arbitrary and tyrannical and their vast powers were freely used for political purposes. The general rule for the regulation of prices laid down by the city committee and adopted by the counties was as follows: the scale for June was to be that of the first of May, for July that of the first of April, for August that of the first of March, *et cetera*, working backward to the original specie basis.[5]

[1] *The Packet*, April 29, 1779.

[2] *Ibid.*, May 27, 1779; *The Gazette*, May 26, June 2, 1779.

[3] *The Packet*, June 5, 1779.

[4] *Ibid.*, June 12, 15, 22, 24, July 3, 13, 20, 22, September 14, 1779; *The Gazette*, June 16, 23, July 7, 1779; Diary of Christopher Marshall, pp. 220, 221, 225–227.

[5] *The Packet*, June 12, 1779. For the July scale see W. B. Reed, Life of Joseph Reed, vol. ii, pp. 144, 145.

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The shops and markets of Philadelphia were visited almost daily, and three members of the general committee by rotation sat at the court house every day to hear complaints and to note violations of the rules, to be reported at the next general meeting.[1] One hundred and eighty-two barrels of flour which Robert Morris had purchased in Wilmington were seized by the committee on the pretext that he had paid more than the market price. It was soon discovered that M. Holker, the French consul general in Philadelphia, was a partner in the transaction, and that the flour was really intended for the use of the French fleet. The whole matter was submitted to Congress, and for a time it threatened to produce international complications. President Reed's support of the committee resulted in a conflict between the state and the confederate authorities. The state finally yielded, however, and the cargo was turned over to its owners, very much to the disgust of the committee, and especially of Thomas Paine, who tried to take advantage of the controversy to settle a personal grudge against Morris.[2]

After a few weeks' trial it became evident that the system was injuring not only the wealthy merchants and importers, whom it was intended to affect, but also the ordinary shopkeepers and mechanics, the mainstay of the Constitutionalist party. The opposition finally became so strong that a formal address was issued by the committee, on September 24, practically admitting the futility of their efforts and providing for their own dissolution.[3] Times were harder then than they had been in June. Work was more difficult to obtain, the available food supply was smaller, the continental currency was more depreciated,[4] and, worst of all, the people had learned to take the law into their

[1] *The Gazette*, June 2, 1779; *The Packet*, June 10, 1779.

[2] Pennsylvania Archives, First Series (Hazard), vol. vii, pp. 558–561, 580, 599–603, 628–632, 641; Journals of Congress (Philadelphia, 1800), vol. v, p. 232; *The Packet*, May 27, July 8, 24, 31, August 14, 1779; Conway, Life of Paine, vol. i, pp. 116–144; Writings of Paine, vol. i, pp. 395–437; Oberholtzer, Robert Morris, pp. 52–56.

[3] *The Packet*, September 25, 1779.

[4] The rate was twenty to one in June, twenty-four to one in September, and thirty to one in October. See Statutes at Large, vol. x, pp. 286, 287.

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own hands. The upper classes were suddenly brought to realize the seriousness of the situation by the famous attack on the house of James Wilson, on October 4, which is known in the histories of that period as the Fort Wilson riot.[1] The Assembly immediately ordered the purchase of one hundred barrels of flour for free distribution, two relief funds were established, and an act of indemnity was passed for those who had taken part in the riot.[2]

The conditions were now ripe for the development of a conservative reaction. "An American", "Conscience", "Adolphus", "Justus", "A Countryman", "Arator", "Libertas", "A. B.", "A Friend in Time of Need", "A Hint" and others filled the local papers with pleas for the repeal of the tender laws.[3] Complaints were also made against the whiskey bill and the laws for preventing forestalling and engrossing.[4] The measures last mentioned were local in character, but there was a general feeling that the tender laws, inasmuch as they applied in part to the continental currency and had been passed upon the recommendation of Congress, should be repealed or amended only upon the receipt of a subsequent recommendation from the same source.[5] As a matter of fact such a recommendation was received March 20,[6] and a motion "for suspending the operation of the law commonly called the tender law, so far as the same relates to the making the continental currency an equal tender with gold and silver in the payment of debts and contracts," was carried on the 21st by a test vote of twenty-eight to twenty-seven. When the actual measure itself, however, was presented, two days later, it was defeated by a majority of thirty to twenty-four. The agitation was kept up, and a com-

[1] Two men were killed and four or five others were wounded. See the contemporary accounts in Reed, Life of Joseph Reed, vol. ii, pp. 150–152, 423–428.

[2] Journals of the House of Representatives, vol. i, p. 387; Statutes at Large, vol. x, pp. 117–119; *The Packet*, October 12, 16, 1779.

[3] *The Packet*, February 17, 19, 24, 29, March 4, 7, 11, 14, 1780; *The Journal*, January 26, February 23, 1780; *The Gazette*, December 22, 1779, March 8, 1780.

[4] Journals of the House of Representatives, vol. i, pp. 379, 414, 434.

[5] See T. P. in *The Packet*, February 8, 1780.

[6] Journals of Congress (Philadelphia, 1800), vol. vi, pp. 33, 34.

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promise was finally reached, based upon the advice of Congress. The continental tender laws were suspended until the end of the next session of the General Assembly, and provision was made for the issue of $1,250,000 in five per cent bills to fund $25,000,000 of continental currency. The suspending act was further continued by enactments of September 22 and December 22, 1780, until June 21, 1781, when all the legal-tender laws were repealed.[1] The greater part of this legislation applied only to the continental currency. The £200,000 of resolve money and the £200,000 issued by the state, March 20, 1777, retained their legal-tender quality continuously until February 20, 1781.[2] The £100,000 issue of March 25, 1780, and the £500,000 issue of April 7, 1781, were legal tender until the passage of the act of June 21, 1781.[3]

The gradual growth of the conservative reaction can be followed not only in the history of legislation but also in the election returns. For a time the question of revising the constitution ceased to be an active issue. James Wilson could truthfully say in 1780: "No endeavours have been lately made to change the constitution; nothing of that kind, that I know of, is now intended."[4] The fact of the matter is that the public were tiring of the old disputes over the constitution and were beginning to take a more active interest in financial and economic problems. There was also a general feeling that the question of revision could safely be postponed until the election of the Council of Censors in 1783. Although the Republicans had only three representatives in the Assembly of 1779–1780, they succeeded in 1780 in carrying the city and county of Philadelphia and in gaining a few seats even in the frontier counties. Party lines were apparently not very strictly

[1] Journals of the House of Representatives, vol. i, pp. 450–453, 498, 500, 501; Statutes at Large, vol. x, pp. 204–214, 228, 229, 247–249, 337–344. The suspending act was passed May 31, the funding act, June 1.

[2] Statutes at Large, vol. x, pp. 265, 266.

[3] *Ibid.*, pp. 183–190, 249–251, 301–308, 337–344; H(enry) P(hillips), Jr., An Historical Sketch of the Paper Money Issued by Pennsylvania (Philadelphia, 1862), pp. 24, 25, 39.

[4] *The Journal*, October 18, 1780.

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drawn, however, inasmuch as Frederick A. Mühlenberg, a Republican, was unanimously chosen speaker, while General Reed, who was by this time a most pronounced Constitutionalist, was re-elected president of the Supreme Executive Council with only one dissenting vote.[1] In the election of 1781 at least thirty-four Constitutionalists and twenty-six Republicans were returned. Owing to the fact that they were absent during the greater part of the session, it is impossible to ascertain the politics of the remaining twelve members. Their inclusion would probably increase slightly the Constitutionalist majority.[2] As the election of October 8, 1782, drew near the Republican leaders became hopeful of carrying the state. John Dickinson was requested to make the race for the Supreme Executive Council in Philadelphia county, with the tacit understanding that he would be elected president in case their party were able to control the Assembly. It seemed to make very little difference that Dickinson had not been a resident of the state for five years, that he was at that time president of Delaware, with two more years to serve, or that he had protested, when he began to sulk in 1777, that "he never would accept any office, either civil or military, honorable or profitable, in the state, whilst the present constitution had existence."[3] The campaign almost immediately narrowed down to a personal contest between Reed and Dickinson. Although Reed was not himself a candidate for the Executive Council, having already served the three years permitted by the constitution, he was the recognized leader of his party, and his administration as president was constantly under fire. For several weeks both men were reviled unmercifully by the newspaper politicians. It was the publication in *The Independent Gazetteer*,[4] over the signature of "Brutus," of a virulent attack upon Reed's war record which

[1] Journals of the House of Representatives, vol. i, pp. 527, 533, 534; Colonial Records, vol. xii, pp. 540, 541.

[2] Minutes of the Sixth, Seventh and Eighth General Assemblies, pp. 500, 501, 621, 622; Colonial Records, vol. xiii, p. 112.

[3] Stillé, Life of Dickinson, pp. 209, 222; "An Independent Whig" in *The Journal*, November 6, 1782.

[4] September 7, 1782.

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precipitated the famous Reed-Cadwalader controversy. The conservative reaction had progressed so rapidly that the Republicans elected their entire ticket in both the city and the county of Philadelphia and made large gains throughout the rest of the state. The first test of party strength was over the choice of a speaker, October 31. The Constitutionalists united upon Reed's brother-in-law, Joseph Montgomery of Lancaster, while Mühlenberg was put forward by the Republicans. Mühlenberg was elected by a majority of four.[1] The joint meeting of the Council and Assembly, held on November 7 for the election of a president and a vice-president, resulted as follows: for president, Dickinson forty-one, General James Potter thirty-two; for vice-president, James Ewing thirty-nine, General Potter thirty-four.[2]

With this election the revolutionary political history of Pennsylvania may fittingly be brought to a close. During the latter part of the colonial period two well-defined political parties were developed: the Proprietary, which represented the Episcopalians and the Scotch-Irish, and the Anti-Proprietary, which represented the Quakers and the Germans. Each was controlled by its more conservative element. In the course of the struggle with the mother country these parties were reconstructed, roughly speaking, along the lines of social and economic cleavage; which is only another way of saying that they became more distinctly sectional in character, because the social and economic differences were themselves determined primarily by geographical influences. The war was not the fundamental cause of this reconstruction. If conditions had been entirely normal, the possession of common social and economic interests would in time have led to the formation of alliances between the Scotch-Irish and the Germans and between the Quakers and the Episcopalians. The war did, however, furnish the immediate occasion for the reconstruction, and for many years it seriously affected the development of the process. The natural tendency

[1] Minutes of the Sixth, Seventh and Eighth General Assemblies, pp. 715–717; *The Journal*, December 4, 1782.

[2] Colonial Records, vol. xiii, p. 413.

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of the Revolution was to stimulate the spirit of rebellion. It was just as logical for the frontier democracy to rebel against the old aristocratic colonial régime as it was for the Americans in general to rebel against the imperial régime. The Quakers and the Episcopalians were agreed in opposing the Declaration of Independence and the formation of a state government; but when those measures were forced upon them, mainly through pressure brought to bear by the other colonies, they lost their unanimity, the Quakers in general becoming Tories or neutrals, while the Episcopalians divided about evenly between the Whigs and the Tories. Through these dissensions, the radicals or Constitutionalists secured possession of the government in 1776 and retained it throughout the war. The mechanics in the city of Philadelphia were enfranchised and the Tories and neutrals were disfranchised; the constitution was made as democratic as possible and care was taken to prevent the adoption of amendments; the West received, and retained until 1779, a representation in the Executive Council and also in the Assembly which was out of all proportion to its numerical strength.

The lack of success in dealing with the financial and economic problems of the war, however, soon brought the Constitutionalists into disrepute. The burden of taxation was thrown almost entirely upon the East; business was unsettled by the enactment of legal-tender laws, embargo laws and laws to regulate prices; the College of Philadelphia was deprived of its charter in order to stimulate political activity among the Presbyterians and to satisfy a private grudge of Joseph Reed; mob violence was condoned, if not openly encouraged; and no attempt was made to restrain the baiting of Tories and neutrals. The Fort Wilson riot of October 4, 1779, marks the culmination of the radical policy and the beginning of a reaction. Although the Constitutionalists were still in power, continental currency was deprived of its legal-tender quality in 1780 and all of the legal-tender laws were repealed in 1781. The Anti-Constitutionalists or Republicans gained steadily in the elections of 1780 and 1781, and they would undoubtedly have carried the state in the latter year if the result had been determined purely by local considerations. The majority of voters, however, were

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afraid to trust them entirely until it was known for certain that Cornwallis's surrender meant the end of hostilities. During the next few years the two parties contended on fairly equal terms. The Republicans were usually successful whenever the financial issue was emphasized, the Constitutionalists whenever it was possible to revive the prejudices of the war. By taking advantage of the general conservative movement which swept over practically all the states in 1786, the Republicans were able first to revise (1786) and then to repeal (1789) the test acts, to secure the ratification of the federal constitution and, finally, to draft a new constitution for the state itself (1790). As national political parties developed, the Constitutionalists became Jeffersonian Republicans and the Republicans became Federalists. Several years elapsed before the former were entirely reconciled to the new conditions. The Whiskey Rebellion of 1794 and the Fries Rebellion of 1799 represented respectively the last efforts of the Scotch-Irish and the Germans to revive the old war-time methods. The natural growth of population in the West, however, in time restored the peaceful supremacy of the radicals, and the party of Jefferson and Jackson retained almost uninterrupted control of the state until 1860.

W. ROY SMITH.

BRYN MAWR COLLEGE.

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MARXISM VERSUS SOCIALISM. III[1]

VI

WE are told that with the general proletarization of the masses, with the concentration of capital and the numerical diminution of capitalist magnates, a parallel process takes place which makes the existing mode of production not only intolerable but untenable. It is the progressive impoverishment, the rapidly increasing misery, the economic sinking and physical degeneration of the proletariat which make a social revolution mandatory upon suffering humanity under pain of starvation. In the words of the *Communist Manifesto*:

> The modern laborer, . . . instead of rising with the progress of industry, sinks deeper and deeper below the conditions of existence of his own class. He becomes a pauper, and pauperism develops more rapidly than population and wealth. And here it becomes evident that the bourgeoisie is unfit any longer to be the ruling class in society and to impose its conditions of existence upon society as an overriding law. It is unfit to rule, because it is incompetent to assure an existence to its slave within his slavery, because it cannot help letting him sink into such a state that it has to feed him instead of being fed by him. Society can no longer live under this bourgeoisie; in other words, its existence is no longer compatible with society.[2]

This doctrine of increasing misery, which was later elaborated by Marx in his *Capital*, is based upon observations and facts of his time. These facts Marx interpreted theoretically in a brilliant way.

Behind this doctrine of increasing misery was an original theory of wages. It was not the "iron law" of wages, as some recent writers claim.[3] There is nothing specifically socialistic

[1] For earlier parts of this study see POLITICAL SCIENCE QUARTERLY, XXIII (June, 1908), 193–219, (December, 1908), 652–689.

[2] Communist Manifesto, p. 31.

[3] So, for instance, Rossignol, Orthodox Socialism, pp. 9, 26, and W. H. Mallock, Socialism (The National Civic Federation, New York, n. d.), p. 10.

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about the iron law of wages. It is Ricardo's theory, to which Lassalle added the adjective iron, and which Marx for many excellent reasons contemptuously rejected.[1] The iron law of wages, while an effective weapon in the hands of so great an agitator as Lassalle, gave as such no reasonable assurance that the end of the wage system was near. A generation ago wages represented the laborer's cost of living; a generation from now wages would, according to the iron law, still represent the laborer's cost of living. There is no reason to assume that the wage-earners of the future will necessarily oppose the wage system any more than the laborers of the past have opposed it. On the other hand, a doctrine that asserts as inevitable a progressively increasing misery of the working class gives reasonable assurance that the wage-earners will increasingly and progressively oppose the existing economic system.

Furthermore, the industrial revolution was followed by an era of progressive diminution of wages. Wages were obviously sinking rapidly, not only below the demands of the standard of living but actually in many instances below the possible requirements of physical existence. Was this phenomenon taken into account by the Ricardian doctrine? In 1835 the Governor-General of India reported: "The misery hardly finds a parallel in the history of commerce. The bones of the cotton weavers are bleaching the plains of India." And the situation of Europe's weavers was not much better. Consider, for instance, the following official figures, quoted by Professor von Schulze-Gaevernitz:

[1] Marx wrote to Bracke in 1875: "Von dem 'ehernen Lohngesetz' gehört Lassalle bekanntlich nichts als das den Goetheschen 'ewigen, ehernen, grossen Gesetzen' entlehnte Wort, 'ehern.' Das Wort '*ehern*' ist eine Signative, woran sich die Rechtgläubigen erkennen. Nehme ich aber das Gesetz mit Lassalle's Stempel und daher in seinem Sinn, so muss ich es auch mit seiner Begründung nehmen. Und was ist sie! Wie Lange schon kurz nach Lassalle's Tod zeigte: die (von Lange selbst gepredigte) Malthus'sche Bevölkerungstheorie. Ist dies aber richtig, so kann ich wieder das Gesetz *nicht* aufheben und wenn ich hundertmal die Lohnarbeit aufhebe, weil das Gesetz dann nicht nur das System der Lohnarbeit sondern *jedes* gesellschaftliche System beherrscht. Gerade hierauf fussend, haben seit fünfzig Jahren und länger die Oekonomisten bewiesen, das der Sozialismus das *Naturbegründete* nicht aufheben sondern nur *verallgemeinern*, gleichzeitig über die Oberfläche der Gesellschaft verteilen könne." *Neue Zeit*, Jahrgang IX (1891), vol. 1, p. 570.

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On an average good weavers in Bolton earned weekly:

	s.	*d.*		*lbs. wheat flour*		*lbs. oatmeal*
1797–1804	26	8	=	100	or	142
1804–1811	20		=	79	or	115
1811–1818	14	7	=	60	or	79
1818–1825	8	9	=	48	or	64
1825–1832	6	4	=	28	or	48

The stuff in question was at the time not yet produced by the power-loom. It permitted, therefore, the chance of far more favorable remuneration than the production, for example of printing calico. There were even wages as low as 2s. to 3s. weekly.[1]

The Silesian weavers were even worse off, they were actually dying of starvation.[2] All this misery was, from the point of view of our economic classics, a situation for which nature alone was to blame.[3]

The growth of pauperism, the degradation and degeneration of the laboring class in the first half of the nineteenth century were not invented by socialist agitators. The facts were so tangible that the most conservative economists of the time were the most emphatic in their condemnation of existing conditions and the first to demand checks and restrictions of the capitalist régime. The writings of the leading French and German economists and the speeches of Lord Ashley contain statements as drastic as any to be found in the socialist literature. The *Communist Manifesto* contains an attack upon the family—an attack which, we believe, Marx himself in later years regretted. There we read:

Abolition of the family! Even the most radical flare up at this infamous proposal of the Communists. . . . The bourgeois clap-trap

[1] Schulze-Gaevernitz, The Cotton Trade in England and on the Continent (London, 1895), p. 31.

[2] J. W. Wolff in *Deutsches Bürgerbuch* für 1845, pp. 174–202.

[3] "A man who is born into a world already possessed, if he cannot get subsistence from his parents on whom he has a just demand, and if the society does not want his labour, has no claim of *right* to the smallest portion of food and, in fact, has no business to be where he is. At Nature's mighty feast there is no vacant cover for him. She tells him to be gone, and will quickly execute her own orders." Malthus, An Essay on the Principle of Population (2d ed., 1803), p. 531.

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about the family and education, about the hallowed co-relation of parent and child become all the more disgusting, the more, by the action of modern industry, all family ties among the proletarians are torn asunder, and their children transformed into simple articles of commerce and instruments of labor.[1]

But no less respectable and conservative a scholar than Robert von Mohl was lamenting as early as 1835, that the working-man's wife and children were confiscated by the factory system, and that family life was utterly destroyed among the industrial proletariat.[2] Nor was the accusation wholly unwarranted that the industrial system was demoralizing the wives and daughters of laboring men. It was rather a common observation that the women, who to so large an extent were replacing skilled male laborers, were thrown at each industrial crisis on the streets as prostitutes. We have, for instance, the following statement from the chief constable of Bolton, Mr. Harris:

> Unfortunate females who, in consequence of the cotton famine, were at its commencement thrown out of employment, have thereby become outcasts of society; and now though trade has revived and work is plentiful they continue members of that unfortunate class and are likely to continue so. There are also in the borough more youthful prostitutes than I have known for the last twenty-five years.[3]

Yet, while acknowledging the unspeakable misery of the working class, our classical political economy had no word of solace and no ray of hope for the toilers. Even as late as 1874 one of the last true-blue representatives of classical political economy, Mr. Cairnes, had the admirable courage to state frankly and precisely his attitude. The possibility of any improvement of the living conditions of the industrial laborers

[1] Communist Manifesto, pp. 39, 40.

[2] "Über die Nachteile, welche sowohl den Arbeitern selbst als dem Wohlstande und der Sicherheit der gesammten bürgerlichen Gesellschaft von dem fabrikmässigen Betriebe der Industrie zugehen, und über die Notwendigkeit gründlicher Vorbeugungsmittel," in K. H. Rau's *Archiv der politischen Oekonomie und Polizeiwissenschaft* (Heidelberg, 1835), vol. ii, pp. 145, 146, 148, 151, 156.

[3] Reports of the Inspectors of Factories for the half year ending October 31, 1865. London, 1866, Parliamentary Papers, Session 1 February—10 August, 1866, vol. xxiv.

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is confined within narrow barriers which cannot be passed, and the problem of their elevation is hopeless. As a body they will not rise at all. A few, more energetic or more fortunate than the rest, will from time to time escape, as they do now, from the ranks of their fellows to the higher walks of industrial life, but the great majority will remain substantially where they are. The remuneration of labor as such, skilled or unskilled can never rise much above its present level.[1]

This was not so much an expression of a personal opinion as a logical deduction from the classical wage-fund doctrine, of which Mr. Cairnes was, if we are not mistaken, the last champion. The tenacity with which political economy clung to so crude a doctrine as the wage-fund theory, a theory which was so palpably below the high mental level which its authors otherwise maintained, can be explained only psychologically. It was a semi-unconscious device for shirking all responsibility for the truly barbarous condition into which the British proletariat was sinking; it was an ingenious apology for the neglect of all moral obligations by state and society, a strong defence of *laissez faire*, putting all the blame for shame and crime and dishonor on the Almighty and his immutable laws.

The wage-fund argument was, roughly speaking, that the general amount of capital is determined by society's past exertions, by the accumulated savings and profits of the past. Out of this sum a certain amount is required for plant and material, the amount being determined by the technical character of industry. The free balance is the wage-fund, thus a fixed and predetermined amount. More than that amount the wage-earners cannot possibly receive, less than that amount they cannot obtain. The rate of wages therefore depends upon the number of wage-earners. Their number is the divisor, the wage fund the dividend. And here comes in the Malthusian doctrine. If the number of wage-earners is great, their wages are low. Low wages check the increase of population, and wages rise. There is, therefore, no use in blaming anybody or anything; one might as well blame the four fundamental rules of

[1] Cairnes, Some Leading Principles of Political Economy Newly Expounded (London, 1874), p. 348.

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arithmetic. The question of wages is a question of division. Should however the wage-earning population so decrease and wages so rise as to diminish profits, the accumulation of capital would thereby automatically be diminished, the wage-fund would contract, and wages be bound to sink again. Neither unionism nor legislation can affect the situation—not even if thereby the efficiency of the wage-earners be increased and the profits of the capitalist class thus remain undiminished. As Sidney and Beatrice Webb have pointed out, this theory

> left no room for any elevation of the wage-earners even if the improvement justified itself by an increase in productive capacity. If one section of the wage-earners succeeded, by peaceful negotiation or law, in so bettering their own conditions of employment as positively to increase their productive efficiency, this would still bring no greater reward to the class as a whole. Though the increase in the cost of their labor might soon be made up to their employers by its greater product, yet this increased drain on the wage fund must automatically have depressed the condition and so lowered the efficiency of other sections, with the result that, though the inequality between the sections would have increased, the aggregate efficiency of the wage-earners as a whole would not have risen. *Thus every factory act, which increased the immediate cost of woman or child labor, had to be paid for by a contemporaneous decrease in somebody's wages; and every time a new expense for sanitation or precaution against accidents was imposed on the capitalists, some of the wage-earners had automatically to suffer a diminution of income.*[1]

Thus, as the reader can readily observe, any attempt to alleviate the living and working conditions of the laboring class could be resisted on high moral grounds: according to the laws of political economy the reform would hurt the very class it sought to help! "For a time, indeed, a natural influence may be dammed back, but only to act, ultimately, with accumulated force. In the long run, God's laws will overwhelm all human obstructions."[2] Consequently those who objected

[1] Sidney and Beatrice Webb, Industrial Democracy (London, 1902), p. 607. The italics are mine.

[2] James Stirling, Trade Unionism (1889), p. 27, quoted in Webb's Industrial

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to the most ruthless methods of exploiting child labor were charged with betraying the very palladium of British liberties. with "undermining the laws of political economy, with assailing God's own established order." And thus we see a Harriet Martineau lamenting in 1833 over the first faint regulations of child labor. Shocked as she was by the official disclosures in regard to the subject, she could not tolerate any legislative interference, any social control; it was against political economy. But a woman's heart is not without mercy, so she hoped that children engaged in industry might die! "The case of those wretched factory children seems desperate; the only hope seems to be that the race will die out in two or three generations; by which time machinery may be found to do their work better than their miserable selves."[1] Miss Martineau forgot that machines were invented precisely for the purpose of substituting child labor for skilled adult labor.

But Marx remembered it; he knew Ure's *Philosophy of Manufactures* by heart.[2] And yet Marx and Engels did not escape the dogmatic fascination of the "economic law." It is this circumstance which stamped Marx as a classical economist. In the fifties Marx, and Engels also, regarded any attempt to regulate economic conditions by the law of the land as fruitless meddling, reactionary in its effect. We find them anathematiz-

Democracy, p. 611. Mr. Stirling was after all but a commonplace interpreter of "God's laws." The palm in this line belongs to the English economist, the Rev. J. Townsend, who wrote under the name "The Wellwisher of Mankind" against the Poor Law. In his masterpiece, which lived to see a second edition—A Dissertation on the Poor Laws (London, 1817), pp. 39–41, quoted by Marx, Capital, I, pp. 602, 603—he explains to us that the poor are improvident and multiply rapidly in order "that there may always be some to fulfil the most servile, the most sordid and the most ignoble offices in the community. The stock of human happiness is thereby much increased, whilst the more delicate are not only relieved from drudgery . . . but are left without interruption to pursue those callings which are suited to their various dispositions." The Poor Law "tends to destroy the harmony and beauty, the symmetry and order of that system which God and Nature have established in the world."

[1] Harriet Martineau's Autobiography, by Maria W. Chapman (London, 1877), vol. iii, p. 87. Quoted in Webb, *op. cit.*, p. 608.

[2] "The effect of substituting the self-acting mule for the common mule is to discharge the greater part of men spinners and to retain adolescents and children." Ure, Philosophy of Manufactures (London, 1835), p. 23.

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ing the ten-hour law in language worthy of Nassau Senior. "The whole social development of England depends upon the development and progress of its industry. All institutions, which interfere with its progress, which try to regulate and control it . . . are reactionary and untenable." [1] From this classical doctrine Marx and Engels, however, drew the conclusion that, since reforms cannot mend the situation, the economic development is bound to lead to a revolution. "And so the only solution of the ten-hour problem, as of all problems arising from the antagonism of capital and labor, is the proletarian revolution." [2]

There are two mutually exclusive principles: the one of social control and state intervention; the other of consistent *laissez faire*, the state guaranteeing property and free contract and then limiting its functions to those of a policeman and night-watchman. It is obvious that economic tendencies can be watched, checked and modified from the point of view of the first principle, but from the other point of view these tendencies are manifestations of immanent and sovereign laws, independent of our desires and our actions. Classical political economy represented at the same time advocacy of the free-trade principle and a theoretical explanation of the phenomena which arise under free trade.

In his *Capital* Marx abandoned his old view of the ten-hour bill and became an inconsistent advocate of social control, but he remained a typical classical free-trader in his theory. He took for granted that the capitalist mode of production is based on non-interference and free trade, and, with exceptional acumen, he worked out its laws and tendencies, which pointed to a

[1] "Wär die Zehnstundenbill hauptsächlich von Reaktionären vertreten, und ausschliesslich von reaktionären Klassen durchgesetzt worden, so sehen wir hier, dass wie sie in die Welt durchgesetzt wurde, eine durchaus reaktionäre Massregel war. Die ganze gesellschaftliche Entwicklung Englands ist gebunden an die Entwicklung, an den Fortschritt der Industrie. Alle Institutionen, die diesen Fortschritt hemmen, die ihn beschränken oder nach ausser ihm liegenden Massstäben regeln und beherrschen wollen, sind reaktionär, sind unhaltbar und müssen ihm erliegen." In Marx's *Neue Rheinische Zeitung*, Heft 4 (London, 1850), p. 13.

[2] *Ibid.*, p. 16. See also Gesammelte Schriften von Karl Marx und Friedrich Engels, vol. iii (Stuttgart, 1902), p. 395.

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general cataclysm of capitalist society and to a social revolution. Yet Marx himself witnessed the passing of the *laissez faire* stage of English capitalism and the reintroduction of social control—the ten-hour bill, the factory acts *etc.* He appreciated their importance. There is abundant proof that he realized that he was witnessing the victory of a new principle. But it was too late; his theory was made up and was fixed in his mind. As a theory, it was profound, but it was unrelated to the transformation which was going on before his eyes. Lassalle's prediction that Marx would be a combination of a Hegel turned economist and a Ricardo turned socialist[1] was completely verified. Marx did develop and apply the economic principles of Ricardo, and the change of tableaus in Hegel's historical process he expected from the self-destruction of capitalism. He was on the lookout for a death certificate, and did not notice that the factory acts and social control signified either a new lease of life for capitalism or the new tableau he was looking for, the dawn of a new era.

Now let us see how Marx came to this doctrine of increasing misery as a law of capitalist society. The iron law of wages, as we have already seen, did not account for the actual steady sinking of wages. Nor was the Malthusian side of the iron-law doctrine acceptable to Marx. Neither of these theories made any such impression upon him as that which he received from Andrew Ure's discussion of the purport and effect of machinery:

> The effect of improvements in machinery not merely in superseding the necessity for the employment of the same quality of adult labor as before, in order to produce a given result, but in substituting one description of human labor for another, the less skilled for the more skilled, juvenile for adult, female for male, causes a fresh disturbance in the rate of wages.[2]

Upon these facts, which were matters of common observation,

[1] " . . . Aber gerade darum eben verlangt es mich so, das dreibändige Ungeheuer des Sozialist gewordenen Ricardo, des Oekonom gewordenen Hegel—denn dieses beides musst und wirst Du vereinigen—auf meinem Studirtisch zu sehen." Briefe von Ferdinand Lassalle an Karl Marx (Stuttgart, 1902), p. 30. The letter cited is dated May 12, 1851.

[2] Ure, Philosophy of Manufactures (London, 1835), p. 321.

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Marx built his theory of wages and population. From these data it followed that in industrial society a surplus population, pauperism of the unemployed and low wages of the employed are due to technical improvements. While Malthus's law may apply to plants or animals, it is not written for modern industrial life, since an entirely new element comes in, that of industrial technique, and this element is the decisive one. In fact, without a large surplus population of operatives, without an industrial reserve army, capitalist industry could not exist, since it could not adjust itself to the fluctuations which are essential to an unorganized competitive mode of production. Without a reserve army on call, the times of prosperity could not be utilized, and the increased demand could not be supplied for lack of factory hands. This reserve army is created and maintained by the introduction of new machinery or by technical improvement of the old. It acts as a dead weight of pauperism upon the active industrial army. Wages are depressed and become insufficient for the physical maintenance of the laborers' families. The improved machinery permits the employment of women and children, the insufficient wages of the men compel it. Thus the proletarian family is destroyed; it becomes a group of factory hands. The large amount of "constant" capital, *i. e.* capital invested in the plant, suggests its longer and intenser utilization. As a result comes the prolongation of the working day. "When a laborer," quotes Nassau Senior, a cotton manufacturer, "lays down his spade, he renders useless a capital worth eightpence. When one of our people leaves the mill he renders useless a capital that has cost £100,000."[1] Therefore the demand for longer hours, a demand which the laborer cannot resist because of the competition of the industrial reserve. Machinery, as Ure explained, turns the flanks of the laboring army and compels it to "surrender at discretion"; and every bit of machinery "confirms the great doctrine already propounded, that when capital enlists science into her service the refractory hand of labor will always be taught docility."[2]

[1] Senior, Letters on the Factory Acts (London, 1837), pp. 13, 14.

[2] Ure, *op. cit.*, pp. 368–370 *et passim*.

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If Ure explained the origin of an industrial reserve army, Professor Merivale, whose writings Marx studied, suggested the industrial reserve army as an indispensable condition for modern industry. If as a result of bad times the unemployed should emigrate to some other country, reasoned Merivale, then with the return of prosperity there will not be a sufficient supply for the increased demand of labor. The factory hands may get better wages; they may breed, according to Malthus, more freely; but still—

> However rapid reproduction may be, it takes, at all events, the space of a generation to replace the loss of adult labor. Now, the profits of our manufacturers depend mainly on the power of making use of the prosperous moment when demand is brisk, and thus compensating themselves for the interval during which it is slack. This power is secured to them only by the command of machinery and of manual labor. They must have hands ready for them, they must be able to increase the activity of their operations when required, and to slacken it again, according to the state of the market.[1]

This was of course Marx's point of view. The economic implications of commercial depressions Marx could not overlook. On the commercial crisis Marx rested his hope of the final cataclysm of capitalist society. The analysis of industrial crises was perhaps the chief contribution of Marx's French predecessors, Fourier and Sismondi,[2] which Marx, as usual, gladly acknowledged.[3]

[1] H. Merivale, Lectures on Colonization and Colonies (1841), vol. i, p. 146.

[2] Ch. Andler, Le Manifeste Communiste, vol. ii, Introduction historique et commentaire (Paris, 1901), pp. 99–102.

[3] Menger and some other writers have wasted a good deal of time in trying to demonstrate the sources from which Marx borrowed his system. In literary matters Marx was extremely punctilious. His erudition was colossal, and wherever he was conscious of borrowing an idea he invariably acknowledged it. Apart from such acknowledged borrowings he was unconsciously influenced, without doubt, by many writers and by many political and social occurrences, and from the psychological and the historical points of view it is interesting to trace these influences; but it is folly to search for a predecessor from whom Marx borrows his *system*. There is not a single separate idea in the system of Marx which was not formulated or suggested by previous writers, but the combination of these ideas in one colossal structure is Marx's own achievement.

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One can therefore easily imagine how little use Karl Marx had from this point of view for the wage-fund apologists, whose sentiments may be summed up in Harriet Martineau's advice to the laboring class: "We manufacturers do what we can, whilst we are increasing that capital on which you must subsist, and you must do the rest by accommodating your numbers to the means of subsistence!" [1] Marx's scorn for Malthusianism and for the wage-fund theories was, however, intellectual rather than moral. He had, as we have seen, as little hope for the rise of the laboring class as any of his contemporaries. But he could not assume that low wages are due to over-population, that after the population has been decimated wages rise, that with the rise of wages the population increases and so on. "A beautiful mode of motion this for developed capitalist production!" he exclaims. "Before, in consequence of the rise of wages, any positive increase of the population really fit for work could occur, the time would have been passed, again and again, during which the industrial campaign must have been carried through, the battle fought and won." [2]

On the other hand the wage-fund theory was not without influence upon Marx, especially since in the ultimate result—the assumed impossibility of any rise of the working class—Marx was entirely in accord with his contemporaries and predecessors. Thus, in somewhat different words, Marx re-states the classical theory, emphasizing the expansion and contraction not of population but of production:

> Accumulation slackens in consequence of the rise of the price of labor, because the stimulus of gain is blunted. The rate of accumulation lessens; but with its lessening the primary cause of that lessening vanishes, *i. e.*, the disproportion between capital and exploitable labor-power. The mechanism of the process of capitalist production removes the very obstacle that it temporarily creates.[3]

In other words: since in capitalistic society the laborer exists for the increase of existing values and not *vice versa*, every rise

[1] Harriet Martineau, The Manchester Strike (1842), p. 101.

[2] Marx, Capital, vol. i, p. 652.

[3] *Ibid.*, p. 633.

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in wages which will endanger the continual expansion of capital is excluded.[1] With the accumulation of capital the proportion of constant to variable capital changes, *i. e.*, the amount of capital invested in plant and machinery in relation to the amount spent on wages is not as it was originally—not, let us say, 1 : 1, but 2 : 1, 3 : 1, 4 : 1, 6 : 1, 8 : 1 *etc.* Since the demand for labor is determined not by the amount of capital as a whole, but by its "variable" constituent alone, *i. e.*, by the amount spent on wages, the demand for labor falls progressively with the increase of the total capital, the largest part of which is now being transformed into means of production, *i. e.*, machinery *etc.*[2] Machinery and other improved means of production, as we have seen, create a surplus population.

> The laboring population therefore produces, along with the accumulation of capital produced by it, the means by which itself is made relatively superfluous, is turned into a relative surplus population; and it does this to an always increasing extent. This is a law of population peculiar to the capitalist mode of production.[3]

But the surplus population, the industrial reserve army, as we have seen, is itself a lever of capitalistic accumulation, in fact a condition of existence of the capitalist mode of production. The course characteristic for modern industry—let us say a decennial cycle of average activity, production at high pressure, crisis and stagnation—depends upon the existence of an industrial army, the greater or lesser absorption of which at any time corresponds to the momentary degree of productive activity. In periods of stagnation, the active labor army is weighed down by the industrial reserve army. In times of prosperity the reserve army still holds the pretensions of labor in check. It is thus the pivot upon which the law of demand and supply of labor works. Pauperism, pauperism on an ever-increasing scale, is therefore a necessary part of the system; it enters into the *faux frais* of capitalistic production. And Marx formulates his theory of increasing misery as follows:

> The folly is now patent of the economic wisdom that preaches to the

[1] Marx, Capital, vol. i, p. 634. [2] *Ibid.*, p. 643. [3] *Ibid.*, p. 645.

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laborers the accommodation of their number to the requirements of capital. The mechanism of capitalist production and accumulation constantly affects this adjustment. The first word of this adaptation is the creation of a relative surplus population, or industrial reserve army. Its last word is the misery of constantly extending strata of the active army of labor, and the dead weight of pauperism.

The law by which a constantly increasing quantity of means of production, thanks to the advance in the productiveness of social labor, may be set in movement by a progressively diminishing expenditure of human power, this law, in a capitalist society, where the labor does not employ the means of production but the means of production employ the laborer, undergoes a complete inversion and is expressed thus; the higher the productiveness of labor, the greater is the pressure of the laborers on the means of employment, the more precarious, therefore, becomes their condition of existence, *viz.*, the sale of their own labor power for the increasing of another's wealth, or for the self-expansion of capital. The fact that the means of production and the productiveness of labor increase more rapidly than the productive population, expresses itself, therefore, capitalistically in the inverse form, that the laboring population always increases more rapidly than the conditions under which capital can employ this increase for its own self-expansion. . . . Within the capitalist system all methods for raising the social productiveness of labor are brought about at the cost of the individual laborer; all means for development of production transform themselves into means of domination over and exploitation of the producers; they mutilate the laborer into a fragment of a man, degrade him to the level of an appendage to a machine, destroy every charm in his work and turn it into a hated toil; they estrange from him the intellectual potentialities of the labor process in the same proportion as science is incorporated in it as an independent power; they distort the conditions under which he works, subject him during his labor process to a despotism the more hateful for its meanness; they transform his lifetime into working time; and drag his wife and child beneath the wheels of the Juggernaut of Capital. But all methods for the production of surplus value are at the same time methods of accumulation; and every extension of accumulation becomes again a means for the development of these methods. It follows therefore that in proportion as capital accumulates, the lot of the laborer, be his payment high or low, must grow worse. The law, finally, that always equilibrates the relative surplus population or industrial reserve army to the extent and energy of accumulation, this law rivets the laborer to capital more

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firmly than the wedges of Vulcan did Prometheus to the rock. It establishes an accumulation of misery, corresponding with accumulation of capital. Accumulation of wealth at one pole is therefore at the same time accumulation of misery, agony of toil, slavery, ignorance, brutality, mental degradation, at the opposite pole.[1]

This is Marx's theory of increasing misery. At the end of the first volume of his *Capital*, summing up and giving an account of the general historical tendencies of accumulation, he clearly indicates whither the increasing misery of the working class is bound to lead. Along with the concentration of industry and centralization of capital "grows the mass of misery, oppression, slavery, degradation, exploitation; but with it too grows the revolt of the working-class, a class always increasing in numbers, and disciplined, united, organized by the very mechanism of the process of capitalist production itself."[2]

Such is the doctrine, a doctrine embracing a theory of population, a law of wages and formulating a tendency which leads inevitably and necessarily to a social revolution and socialism. It is undoubtedly an ingenious doctrine; its critique of Malthusianism and of wage-fund theories is as a whole well taken; yet it was destined to share the fate of preceding economic doctrines. Life in its development has betrayed them and left them behind. And their value is now but that of historical monuments.

It has already been pointed out that the Marxian theory which we are now discussing is framed on the pre-supposition of consistent individualism, non-resistance on the part of the laboring class till no alternative is left to revolution, non-interference on the part of the state, with economic life reduced to a mechanical entity, till the very mechanism of economic life makes the existent state impossible. Were it not for the circumstance that Marx witnessed the introduction of the factory acts and the resumption of social control on the part of the state, his theory would have been open to criticism only as defective in its psychology. Considering that he lived to see these changes, his theory is open to sharper criticism: it dealt

[1] Marx, Capital, vol. i, pp. 660, 661.

[2] *Ibid.*, p. 789.

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with a fictitious society, and the result was a fictitious doctrine, based on the facts as they had been, but unrelated to the facts as they were, and therefore without claim to reality and truth.

It is indeed evident that Marx saw how trade-unionism alone might undermine and render worthless his wage law and his whole theory of increasing misery. He wrote:

As soon, therefore, as the laborers learn the secret, how it comes to pass that in the same measure as they work more, as they produce more wealth for others, and as the productive power of their labor increases, so in the same measure even their function as a means of the self-expansion of capital becomes more and more precarious for them; as soon as they discover that the degree of intensity of competition among themselves depends wholly on the pressure of relative surplus population; as soon as by trades unions *etc.* they try to organize a regular coöperation between employed and unemployed *in order to destroy or to weaken the ruinous effects of this natural law of capitalistic production on their class*, so soon capital and its sycophant, political economy, cry out at the infringement of the "eternal" and, so to say, "sacred" law of supply and demand. Every combination of employed and unemployed disturbs the "harmonious" action of this law.[1]

So Marx acknowledged that trade-unionism might weaken or even destroy the "natural law" of wages. And that unionism has done it is beyond question. Organized labor has succeeded in steadily improving its living conditions. In 1892, in his preface to the second edition of his book on the working class in England, Frederick Engels had to acknowledge it and sadly to admit the fact that, with the improved conditions, the revolutionary spirit of the Chartist epoch had subsided. He wrote:

The engineers, the carpenters, joiners and the bricklayers are each of them a power, to that extent that, as in the case of the bricklayers and bricklayers' laborers, they can even successfully resist the introduction of machinery. *That their condition has remarkably improved since 1848 there can be no doubt, and the best proof of this is the fact that for more than fifteen years not only have their employers been with them, but they with their employers, upon exceedingly good terms.* They form an aristocracy among the working class; they have succeeded in en-

[1] Marx, Capital, vol. i, p. 655. The italics are mine.

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forcing for themselves a relatively comfortable position and they accept it as final. They are the model workingmen of Messrs. Leone Levi and Giffen and they are very nice people indeed nowadays to deal with, for any sensible capitalist in particular and for the whole capitalist class in general.[1]

The "natural law" of capitalist production had failed to work. Not only was misery not on the increase, but the conditions of the so-called aristocracy of labor, as Engels himself acknowledged, had remarkably improved.

There is also an official *ex cathedra* statement of Marx in regard to this matter, a statement which opens up an extremely interesting psychological question. Marx published the first volume of his *Capital* in 1867. In it he developed his theory of increasing misery. Yet in 1864, while he was elaborating that volume he openly abandoned this theory. In his book, it must be remembered, this theory is a central doctrine. Not only does it embody his theory of population and his wage law, but upon it is based his progressively intensified class-struggle doctrine; and, furthermore, it is a vital part of his theory of the inevitable cataclysm of capitalistic society. The statement just made that he abandoned the increasing misery theory in 1864, is based on what he said in his inaugural address before the International Workingmen's Association in that year:

After a thirty years' war conducted with wonderful endurance, the English working class succeeded in utilizing a temporary clash between the landed aristocracy and the moneyed aristocracy, and the ten-hour bill was put through. Everybody acknowledges now its significant physical, moral and intellectual advantages for the working class, which are chronologically now recorded in the semi-annual reports of the factory inspectors. The majority of the continental governments feel themselves also obliged to introduce the English factory acts, with greater or less limitations, and the British Parliament is compelled to enlarge from year to year the sphere of influence of the factory acts. The wonderful results of this labor measure were of more than mere practical significance. The notorious mouthpieces of the British bour-

[1] Fr. Engels, The Condition of the Working Class in England in 1844 (London, 1892), p. xv. The italics are mine.

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geoisie, scholars like Dr. Ure, Professor Senior and wiseacres of the same type, prophesied and proved to their own heart's satisfaction that any legal limitation of the working day would chime the death hour of British industry—an industry which like a vampire could thrive only on blood, children's blood above all. The struggle for the legal limitation of the working day was the more bitter, because it was not merely a check upon individual greed, but also a direct intervention in the great battle waged between the blind law of supply and demand—the political economy of the bourgeois—and the principle of social regulation of production, which is the quintessence of the political economy of the laboring class. And therefore the ten-hour bill was not only a great practical success, it was the victory of a principle. In the bright sunlight of day the bourgeois political economy was here vanquished for the first time by the political economy of the working class.[1]

Thus Marx himself threw overboard his theory of increasing misery. The victory of the new principle meant the defeat of the principle upon which the whole Marxian theory rests, the crumbling of his whole economic system, of all his economic proofs and evidences of the inevitable *dies irae*, of the cataclysm of our whole economic organization. The foundation upon which Marx's entire work was built, the inevitable *laissez faire*, Marx himself acknowledged to have been washed away even before his work was ready for print, before he finished its architectural details.

Anybody who studies the first volume of *Capital* can see there the unconscious conflict of the two principles. On one hand the elaboration of a purely economico-mechanic system, not as a theoretical possibility but as an actual tangible reality predestined to run itself to ruin in its own course. And on the other hand the acknowledgment of the salutary and modifying effects of social control, which determines the character of the economic phenomena.

If the Marxian theory were a "static state" theory, any

[1] Inaugural Address delivered by Marx, September 28, 1864, in St. Martin's Hall. *Der Vorbote*, politische und sozialökonomische Zeitschrift, Centralorgan der Sektionsgruppe deutscher Sprache der Internationalen Arbeiterassociation, redigirt von Joh. Phil. Becker (Genf. 1866), pp. 38–39.

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tendency indicating the direct opposite of what the theory claims could be classed by the Marxists as one of those "slight" deviations of a temporary character due perhaps to man-made law, which is after all of little concern to truth everlasting. But Marx's just claim to fame rests precisely on his refusal to traffic in eternal verities. His economic laws are laws of capitalist production only. Every economic epoch has its own laws, but they are laws of development, laws actually governing the economic tendencies. If therefore the actual facts flatly contradict the theory, as they do, there remains but the alternative: either to deny the facts or to repudiate the theory.

Both alternatives have found their champions. Some imaginative and enterprising socialists, not weighed down with too much learning, deny the facts of the case; others claim that the doctrine of increasing misery is but a minor and unessential point, that could and should be dropped as immaterial and irrelevant to the Marxian theory and to scientific socialism. So for instance Franz Mehring, a Marxist, justly held in high esteem by the socialists of his country on account of his learned historical works, makes the curious statement that the theory of increasing misery is but a relic inherited by Marx from the bourgeois political economy, which has lost long ago what little sense and justification it might have once had and which has nothing in common with orthodox Marxism.[1] Schönlank, a German socialist of marked ability, frankly admits that the theory of increasing misery is untenable.[2] The same is the

[1] "Wie lange die Partei noch den Genuss dieser Debatten haben wird, das wissen wir nicht, aber wenn sie ihn noch so viele Jahre haben sollte, wie sie ihn schon Jahre lang gehabt hat, so wird auch nicht ein Atom Nutzen dabei heraussspringen. Aus dem einfachen Grunde nicht, weil die 'Verelendungstheorie' längst den historischen Sinn und Verstand verloren hat, den sie einst gehabt haben mag. Ein Product der bürgerlichen Oekonomie solange diese noch unbefangen arbeiten konnte, hat sie mit dem 'orthodoxen Marxismus' gar nichts zu thun." Mehring, "Historisches zur Verelendungstheorie." *Neue Zeit*, Jahrgang XX (Stuttgart, 1902), vol. i, pp. 164, 165.

[2] "Die Verelendungstheorie in dem absoluten Sinn, die lange durch unsere Partei gelaufene und auch im ersten Theil des Erfurter Programms noch aufbewahrte Ansicht von der sich stetig verschärfenden Verelendung, ist nicht mehr zu halten!" *Leipziger Volkszeitung*, 1897, quoted in the "Bernstein-Debatte" in Hanover. Protokoll über die Verhandlungen des Parteitages der Sozialdemokratischen Partei Deutschlands. Abgehalten zu Hannover, Oktober 9–14, 1899. Pp. 137, 138.

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attitude of David, who urges his comrades to acknowledge the mistake.[1]

And yet the true-blue Marxists are unwilling to drop this theory. They realize that in dropping it they are dropping Marxism, but they do not realize that in interpreting it away they are interpreting Marxism away. The whole construction of Marx's *Capital* leads up to the doctrine of increasing misery. In rejecting this theory, one rejects also Marx's theory of population, his theory of wages, his theory of accumulation of capital. And if what is left be Marxism, it is Marxism with Marx left out. Not only is his theory shattered, but what rational foundation is there left for his vision and hope, his goal and inspiration—the breakdown of capitalism and the social revolution? These conceptions of Marx as well as his idea of the general crisis are based upon the progressively increasing misery of the working class.[2]

VII

Since the Marxian System cannot without wrecking its theory disavow the doctrine of increasing misery of wage-earners, it devolves upon us to test this doctrine by the actual facts of economic life, *i. e.*, by wage statistics. Relatively easy as it is to obtain figures of wages for long periods, their scientific utilization presents considerable difficulties. The data have invariably been gathered and controlled by different methods; the money wage of the time and the purchasing power of the wage varied greatly. The task is therefore not a grateful one, and no historical statements of wages based upon miscellaneous statistics can lay claim to mathematical exactness. And yet in spite of all the inevitable inaccuracies these statistical data suffice to establish the general tendencies beyond a shadow of reasonable doubt.

[1] "Spielen wir nicht Versteck, sondern erklären wir ruhig: diese Position des Programmes über die Verelendung ist ein Irrthum." *Ibid.*, p. 138.

[2] So Peter Struve points out, "dass die Zusammenbruchstheorie als eine Theorie der allgemeinen Krise notwendig auf die Lehre von der fortschreitenden Verelendung resp. der sozialen Herabdrückung der arbeitenden Bevölkerung zurückführt." Peter von Struve, "Die Marx'sche Theorie der Sozialen Entwicklung." Braun's *Archiv für soziale Gesetzgebung und Statistik*, vol. xiv, 1899, p. 695.

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A valuable supplement to the ordinary statistics of workingmen's earnings are the budgets of the wage-earner's expenditures. Although budget literature is now being traced back to Sir William Petty and his *Political Arithmetic*, for our purposes only material of much later date is of interest. We may start with a contemporary of the *Communist Manifesto*—Dr. Alexander v. Lengerke's *Ländliche Arbeiterfrage*,[1] which is a very important volume. The itemized expenditures are estimates, but they are carefully and minutely considered estimates submitted at the request of the Prussian government by 185 local agricultural societies, and they all relate to the probable expenditures of peasant-families consisting of five members.

This investigation embraces agricultural laborers and peasants who supplement their income from farming by outside agricultural labor. 115 thalers was the average income of such families throughout Prussia in 1848;[2] and on an average not less than 96 per cent of their budget went for the satisfaction of the elementary physical wants; food, shelter, clothing, fuel and fodder. The remaining 4 per cent was spent on "Abgaben an Staat, Kirche, Schule." Since taxes may well be estimated at about 3 per cent, it left but 1 per cent for non-physical wants.[3]

An *enquête* on similar lines covering the whole of Germany was undertaken in 1872. The results were published by Professor Von der Goltz in 1875,[4] and show an extraordinary material improvement of the living conditions of the agricul-

[1] Die ländliche Arbeiterfrage. Beantwortet durch die bei dem königlichen landes-Oekonomie-Collegium aus allen Gegenden der preussischen Monarchie eingegangenen Berichte landwirtschaftlicher Vereine über die materiellen Zustände der arbeitenden Classen auf dem platten Lande. Berlin. Im Bureau des königl. Ministeriums für landwirschaftliche Angelegenheiten 1849. The volume is rare, but there is a copy in the Library of Congress.

[2] "Im grossen Ganzen würde sich daher der Bedarf für eine ländliche Arbeiter-Familie in der Preussischen Monarchie auf durchschnittlich 115 Rthlr stellen." v. Lengerke, Ländliche Arbeiterfrage, p. 13.

[3] See also on the subject, Ernst Engels', Die Lebenskosten Belgischer Arbeiter-Familien, Dresden, 1905, p. 19.

[4] Die Lage der ländlichen Arbeiter im Deutschen Reich. Unter Mitwirkung von Prof. Richter, v. Langsdorff, erstattet von Dr. Th. Frh. von der Goltz, Professor an der Universität Königsberg, Berlin, 1875. (A copy in the Cornell University Library.)

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tural laborers. The expenditures of a family of five were in Prussia Mk. 632.7 instead of Mk. 315.30 as in 1848, and throughout Germany the average expenditure amounted to Mk. 717.[1]

The great material advance of the agricultural laborer and the rise in his standard of living were reported in every part of the German Empire.

And yet, as we have previously pointed out, the *Communist Manifesto* must not be regarded as a rhetorical exercise of a mere demagogue. In the midst of its fiery revolutionary eloquence the *Manifesto* shows more regard for facts than many a learned work of its time. The manifesto is in truth but a reflection of the effects of early industrialism; it was written under the fresh impression of hunger riots of the Silesian weavers, which Heine and Hauptmann have immortalized.[2] It is therefore especially fortunate that one of the most careful budget studies should cover the economic status of the Silesian textile workers during the period of 1865–1874. This study was make by Karl Schwedler,[3] the manager of a local

[1] Engel, *op. cit.*, p. 19. "Geistige Bildung. Hinsichtlich dieses Punktes wird entschieden noch häufiger als in Bezug auf Sittlichkeit ein Fortschritt angegeben . . .

In Bezug auf die materielle Lage. Hier wird fast allgemein eine Verbesserung der materiellen Lage der ländlichen Arbeiter constatirt, dabei freilich aber oft hervorgehoben, dass dieselben nicht wirtschaftlicher geworden seien." . . .

Dr. v. d. Goltz goes on to show that within the last 30 years prices increased as follows: rye 25 per cent, potatoes 31 per cent, butter 48 per cent and meat 53 per cent; but wages increased in most provinces in the neighborhood of 100 per cent while many articles of consumption (especially "Colonialwaaren") decreased in price. He also reminds us of the fact that the products which increased in price are chiefly produced by the agricultural laborers themselves on their plots of land, or they receive it as a "Naturaldeputat" from their employer. Professor von der Goltz therefore comes to the conclusion: "Nach dem Gesagten glauben wir unsererseits hervorheben zu müssen, dass wir die in der Enquete mit so grosser Uebereinstimmung gemachte Angabe über die thatsächliche Verbesserung der materiellen Lage der ländlichen Arbeiter als eine durchaus zutreffende anerkennen." Th. von der Goltz, *loc. cit.*, pp. 496, 497, 498.

[2] Heine's famous poem "Die Weber," begins with these lines; "Im düstren Auge keine Thräne, Sie sitzen am Webstuhl und fletschen die Zähne: Deutschland, wir weben dein Leichentuch, Wir weben hinein den dreifachen Fluch, Wir weben, wir weben!"

[3] Karl Schwedler, Arbeitslöhne in der Schlesischen Textil-Industrie und Unterhaltsbedarf in den letzten 10 Jahren. In the *Arbeiterfreund*, vol. xii, Berlin, 1875, p. 149 ff.

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coöperative society (*Consumverein*). All the prices were taken from the actual account books, the sums spent minutely itemized, the increase in rent not overlooked: in short the study is exceptionally trustworthy. Here are the results: Schwedler's tables show that in the ten years prices advanced 35 per cent. Wages on the other hand advanced for men 60 per cent, women 29 per cent, girls 50 per cent, boys 50 per cent.[1]

What percentage of these increasing wages form a surplus over the merely physical necessities of life and the allowance for its fuller development? An interesting table, which answers this question, is to be found in a recent curious Russian book by S. Solncev.[2] Solncev used the Berlin workingmen's budgets collected in 1879, 1896 and 1900 by Berlin statisticians.

	Expenditures per Person in a Family					
	In Marks			Per Cent to all Expenditures		
	1879	1896	1900	1879	1896	1900
1. Rent	52.0	60.6	76.5	16.3	17.3	17.01
2. Furniture	6.8	?	?	2.2	?	?
3. Fuel	19.7	16.3	18.9	6.0	4.7	4.18
4. Light	5.0	4.2	5.7	1.6	1.2	1.25
5. Clothing, wash, etc.	39.7	33.3	49.7	12.4	10.0	11.06
6. Food	156.7	171.9	203.2	48.9	48.1	45.01
7. Drinks and food in restaurants, etc.	17.0	20.5	9.5	5.3	5.8	2.16
8. Care of health, etc	7.4	5.9	4.8	2.3	2.0	1.03
A. Expenditures of a physical nature	304.3	322.7	368.3	95.0	89.4	81.73
B. Expenditures non-physical	16.1	38.2	81.3	5.0	10.6	18.27
Total	320.4	360.9	449.6	100.	100.	100.

Non-physical expenditures, which practically did not exist in agricultural districts in 1848, have gradually risen from 5 per cent in 1879 to 18 per cent in 1900 in family households. In 1903 the non-physical expenditures of a Berlin workingman's family, numbering 4 persons, were already fluctuating from 18

[1] Karl Schwedler, *loc. cit.*, p. 153.

[2] S. Solncev, Rabachie budgeti v svyazi s teoriey "obednenia," 1907, p. 69.

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to 25 per cent of the total expenditures, and those of a bachelor averaged as high as 28 per cent.[1]

The admirable work of Professor Ashley on *The Progress of the German Working Classes* will give us the reason for such an extraordinary change. Every side of Germany's economic life is discussed by Mr. Ashley, and they all testify to the gradual but steady improvement of the workingmen. In Krupp's works, for instance, the average wage has risen, between 1871–1900, 57 per cent, while, due to a special housing policy, rent actually decreased. During the same period the price of bacon increased but 2 per cent, that of beef 11 per cent, veal 21 per cent, that of potatoes *decreased* 31 per cent, that of bread *decreased* 27 per cent.[2]

The annual earnings in the Hamburg shipbuilding yards show the following increase in per cent:

	1880–1890	1890–1899	1880–1899
Shipbuilders	7.2	13.5	21.7
Machinists	19.4	13.3	35.3
Helpers	30.4	14.5	49.3
Boilermakers	28.00	13.0	44.7

And this general rise took place in spite of the introduction of the ten-hour day in the middle of the eighties.[3] The approximate average wage of the coal heavers in Westphalia was in

1865	Mk. 600–700
1874	900–1000
1886–88	800–900
1890	1100–1200
1898–1899	1300–1500[4]

The deposits in savings banks in Saxony increased from Mk. 114.65 per head of the population in 1880 to Mk. 222.03 in 1900.[5] In Prussia the number of savings bank depositors in 1875 was 2,209,101, the amount deposited 1112 millions—in

[1] Solncev, *op. cit.*, p. 38.

[2] W. J. Ashley, The Progress of the German Working Classes in the last Quarter of a Century. 1904, p. 91.

[3] *Ibid.*, p. 93. [4] *Ibid.*, p. 95. [5] *Ibid.*, p. 116.

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1898—8,049,599 depositors and the amount deposited 5287 millions.[1] The consumption of all ordinary articles of food increased greatly during the same period throughout Germany. The consumption of wheat rose from 51.6 kilos per head in 1879–1884 to 74.4 kilos in 1895–6, that of sugar from 6.4 kilos in 1871–1881 to 10.7 kilos in 1891–1896, that of rice from 1.55 kilos in 1871–75 to 2.49 kilos in 1891–95, of petroleum 1.87 kilos in 1886–90 to 16.14 kilos in 1896.[2] The consumption of meat increased in Prussia from 18 kilos per head in 1867 to 37 kilos in 1897; in Saxony the consumption of beef and pork increased from 22.2 kilos in 1860 to 43.1 kilos in 1900. The death rate decreased from 29.0 per 1000 in 1870 to 20.6 in 1902,[3] the death rate in Berlin from 31.89 in 1861–1870 to 17.38 in 1903; the number of suicides decreased from 31 per 100,000 in 1871–1881 to 24.5 in 1897–1901,[4] the over-sea emigration decreased from 3.22 per cent of the population in 1884 to 0.40 per cent in 1900. The number of overcrowded dwellings in Berlin with one heated room decreased from 195.5 per 1000 in 1875 to 132.2 in 1895; with two heated rooms from 20.7 per 1000 in 1875 to 10.9 in 1895; in Frankfort, the number of overcrowded dwellings with one heated room was, in 1885, 127.7 per 1000, in 1895, 43; overcrowded dwellings with two heated rooms in 1885 20.3 per 1000, in 1895, 7.8.

So much for the "increasing misery" in Germany. Now let us turn to England.

Sir Robert Giffen in "The Progress of the Working Classes in the Last Half Century" gives us some extremely interesting data on the subject, which we shall take the liberty of quoting. Giffen's tables are somewhat antiquated, but still interesting and instructive enough for our purposes. They were compiled about 1882.[5]

[1] W. J. Ashley, *op. cit.*, p. 117.

[2] *Ibid.*, pp. 120–122.

[3] *Ibid.*, p. 130.

[4] *Ibid.*, p. 132.

[5] We are quoting from the American edition published by G. P. Putnam's Sons, 1885, p. 5.

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Occupation	Place	Wages Fifteen Years Ago	Wages Present Time per Week	Amount	Increase Per Cent
Carpenters	Manchester .	24s.	34s.	10s.	42
"	Glasgow . .	14s.	26s.	12s.	85
Bricklayers	Manchester .	24s.	36s.	12s.	50
"	Glasgow . .	15s.	27s.	12s.	80
Masons.	Manchester .	24s.	29s. 10d.	5s. 10d.	24
"	Glasgow . .	14s.	23s. 8d.	9s. 8d.	69
Miners	Staffordshire.	2s. 8d. per day	4s. per day	1s. 4d.	50
Pattern Weavers, etc.	Huddersfield.	16s.	25s.	9s.	55
Wool Scourers. . .	" .	17s.	22s.	5s.	30
Male Spinners . . .	" .	25s. 6d.	30s.	4s. 6d.	20
Weavers	" .	12s.	26s.	14s.	115
Warpers and Beamers	" .	17s.	27s.	10s.	58
Winders and Reelers.	" .	6s.	11s.	5s.	83
Weavers (men) . .	Bradford . .	8s. 3d.	20s. 6d.	12s. 3d.	150
Reeling and Warping	" . .	7s. 9d.	15s. 6d.	7s. 9d.	100
Spinning (Children).	" . .	4s. 6d.	11s. 6d.	7s. 1d.	160

Sir Robert Giffen's figures were indorsed by Sidney Webb. He writes:

There seems no reason to doubt, so far as concerns the male worker, the general accuracy of Sir Robert Giffen's conclusion that the rise in nearly all the trades has been from 50 to 100 per cent. In some of the building trades, for instance, wages have in certain localities actually doubled during the present century. The son of a carpenter in Scotland told me that he remembered his father about 1850 regularly bringing home 34/6 as his wage—not for one, but for four weeks' work, the system of monthly pays not yet having been abolished. It is true that this was in the neighborhood of Inverness, but I mention the incident to recall the fact that wages have often risen most in obscure nooks and corners of the land which have been opened up by those great levelers of wages and prices—railways and the postal system. But even in Glasgow the minutes of the energetic Joiners' Union show that it was fighting hard between 1833–1837 to get a standard rate of 21/ per week, as against 36/ at the present day, and the stone masons in Glasgow have improved their rate of pay from 5d per hour in 1853, which is the earliest year for which I could obtain the figures, to 8½d per hour now. And if we turn to quite another industry, I have ascertained the rate of wages of enginemen at a small colliery in the Lothi-

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ans since the year 1831. They begin at 11/ per week, and rise steadily, though with numerous fluctuations, to 23/4 in 1872, and no less than 33/3 per week in 1892.[1]

Of course rent has greatly increased in the last decades, but of the articles of consumption only meat has increased in price, and meat played practically no rôle in the workingman's diet some fifty to sixty years ago. Pork advanced but slightly in price, 8 lbs. of pork cost in 1840 4s. 3½d., in 1881 4s. 6d.; on the other hand many food stuffs have become much cheaper. For instance, the price of 1 cwt. of sugar in 1839–40 was 68s. 8d., in 1882 21s. 9d.

That the increase of the wages signified a tremendous increase in the real wages and not in the mere money wages, is fully demonstrated by the almost incredible growth in England's per-capita consumption, which is after all in the main workingman's consumption. Here is a table of the quantities of principal imported and excisable articles retained for home consumption per head of the total population of the United Kingdom:

		1840	1881
Bacon and ham	lbs.	0.01	13.93
Butter	"	1.05	6.36
Cheese	"	0.92	5.77
Currants and raisins	"	1.45	4.34
Eggs	No.	3.63	21.65
Rice	lbs.	0.90	16.32
Cocoa	"	0.08	0.89
Corn, wheat and wheat flour	"	42.47	216.92
Raw sugar	"	15.20	58.92
Refined sugar	"	nil	8.44
Tea	"	1.22	4.58
Tobacco	"	0.86	1.41
Wine	gals.	0.25	0.45
Spirits	"	0.97	1.08
Malt	"	1.59	1.91

Giffen is certainly right in calling these figures "wonderful."[2] And everybody must agree with him that such figures

[1] Sidney Webb, Labour in the Longest Reign (1837–1897). London, 1905, p. 4.

[2] Giffen, *loc. cit.*, p. 20.

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are the best evidence of diffused material well-being among the masses.

But progress did not stop with the date of Giffen's investigation. Bowley's figures begin just where Giffen's stop, namely in 1882. Here are the conclusions of England's best statistician: [1]

	1883–1887	1888–92	1893–97	1898–1902
Average money wages, 1883–87 taken for 100	100	110	115	130
Average prices ditto	100	95	90	92
Average money *income* per head of the population, ditto	100	113	108	120
Consumption of commodities, ditto.	100	108	112	120
Percentage out of work	7.2	3.8	5.4	3.5
Number of adult male paupers per 1000 adult males	35	33	38	31
Number of adult female paupers per 1000 adult females	42	36	35	29

The average real wages (that is wages, expressed not in money, but in goods that can be purchased by them) in the United Kingdom Bowley expresses as follows, in percentages of the level of 1900:

Years	1830,	'40,	'50,	'60,	'70,	'75,	'80,	'85,	'90,	'95,	1900
Real Wages	45	50	50	55	60	70	70	72	84	93	100

and Bowley adds: "If this table is studied, it will be found that the rate of increase in the last twenty years has been greater than in any previous period of equal length." [2]

I will not burden the reader with any further data relating to the steady increase of well-being of the English laboring class, although we could easily fill a volume with such figures. We refer the more inquisitive to the *Journal of the Royal Statistical Society* where they will find the information in Bowley's admirable articles.

We could not well close without reference to the United

[1] A. L. Bowley, Statistical Studies: relating to National Progress in Wealth and Trade since 1882. London, 1904, p. 32.

[2] Bowley, *loc. cit.*, p. 33.

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States. The opinion is widespread that decades ago the laborer found here a country flowing with milk and honey, but that since capitalism on a large scale has developed, conditions have changed for the worse, and that historically considered, the situation of the working classes in America has deteriorated rather than improved.

It does not seem to us that such a view can be supported by facts; the economist will certainly tend to indorse the conclusions at which a man like Levasseur arrived. In his *L'ouvrier américain* Levasseur writes:

> In the *Population Française* I said, speaking of wages: 'The doubling of wages in France in the last sixty years is an average estimate based upon figures which we have collected, and which we believe to be correct. Like most averages, however, it may be disputed. It is not difficult to find conflicting instances here and there. . . . But the divergence of extremes does not invalidate a mean when the latter is based upon a majority of returns.' And what I have said in speaking of the greater part of the states of Europe I now reaffirm in speaking of the United States.[1]

There is no doubt whatsoever that the occupation and exploitation of a new continent, a process which has not yet come to a close, offered an unprecedented spectacle. *Res nullius cedit primo occupanti.* The natural resources which were nobody's were becoming somebody's, millions of prosperous homes were built on the land which the sturdy pioneers of American civilization had conquered. The reward of the most enterprising and successful was wealth never known of nor heard of in the past. Many, if not the majority, of the employers of today began as wage-earners themselves. But those that have graduated from the laboring class we are not considering here; the masses that at the given time constituted and now constitute the laboring class, form the object of our inquiry. Does or does not the condition of the working class in America justify the doctrine of increasing misery—this is the question before us.

[1] E. Levasseur, The American Workman. English translation by T. S. Adams. Baltimore, 1900, pp. 287, 288.

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Some very interesting early statistical material was gathered by the late Carroll D. Wright, while chief of the Massachusetts Bureau of Statistics of Labor.[1] These data, which are about as reliable as any early statistics can be, show conclusively how much as a rule we exaggerate the good old times. Scarce as labor was at the dawn of American civilization, those whom circumstances compelled to be laborers received very meager pay. In Massachusetts about 1633 the wages of a master carpenter and master mason were about 33 cents a day; master tailors 27 cents per day.[2] The average price of a bushel of barley was then 67 cents, of corn 48 cents, of wheat 81 cents, a pair of men's shoes were worth in 1672 about 83 cents. "A skilled laborer made in a week's work only enough," writes T. S. Adams, "to buy about four bushels of corn, between three and four bushels of peas, or between two and three bushels of wheat. Two and a half day's work was required to earn enough to buy a pair of rough shoes."[3] The wages towards the end of the seventeenth century show no substantial change. The wages of the middle of the eighteenth century begin to show an increase and they progress steadily ever since. In Carroll D. Wright's report of 1885 we find the following data,[4] for the daily wage. The agricultural laborers received in 1760 about 31 cents, in 1800 about 47 cents, 1830 about 80, 1860, $1.00, 1880, $1.31; blacksmiths in 1790, 69 cents, in 1820, 84 cents, 1830, $1.12, 1860, $1.69, 1880, $2.28; carpenters 1780, 52 cents, 1830, $1.07, 1860, $2.03, 1880, $2.42; common laborers 1780, 37 cents, 1800, 62 cents, 1830, 79 cents, 1860, 97 cents, 1880, $1.48; machinists 1840, $1.35, 1850, $1.62, 1860, $2.15. 1880, $2.49; masons 1780, 66 cents, 1830, $1.22, 1860, $1.53, 1880, $2.79; the wages of other occupations advanced in the same proportion. "Consolidating and averaging the wages . . . the

[1] Mass. Bureau of Statistics of Labor. Sixteenth Annual Report. Boston, 1885.

[2] *Ibid.*, p. 429.

[3] Adams and Sumner, Labor Problems, 3d edition, New York, 1905, p. 505.

[4] Mass. Bureau of Statistics of Labor, Sixteenth Annual Report, Boston, 1885, pp. 454, 455.

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general average increase in wages shown for the decade ending with 1860 as compared with that ending with 1830 is 52.3 per cent." This is Colonel Wright's conclusion.[1] Consolidating the prices of various types of articles of consumption during the same period, "the general average percentage of increase in prices is found to be 9.6 per cent," [2] figures sufficiently indicative of the improved financial condition of the workingman.

In an elaborate review of wages and prices of the period between 1860–1878 Carroll D. Wright comes further to the conclusion that the ascertained relations of wages and prices show

> In 1878 an advance over 1860 of twenty-four and four-tenths per cent in average weekly wages, and an average advance in cost of living of fourteen and a half per cent, which means a pecuniary betterment of ten per cent in the general condition of the workingman in Massachusetts in 1878 as compared with 1860, no account being made of the decrease in the hours of labor in many industries.[3]

The recent industrial development records an even more substantial increase. Taking the year 1890 for 100 as a standard year, the wages show the following average rise throughout the United States in industry and agriculture.

	1870	1875	1780	1885	1890	1895	1900
Industry							
Relative nominal wage	87.3	88.7	92.6	97.8	100.0	97.4	103.1
Real wage	68.7	72.5	82.8	98.2	100.0	102.0	104.5
Farm labor with board							
Relative nominal wage	?	90.8	83.8	99.1	100.0	96.5	113.0
Real wage	?	74.3	82.6	99.5	100.0	101.0	116.3

This is an abbreviation of Adams and Sumner's table,[4] in explanation of which Adams writes: "The year 1866 ushered in a new epoch, during which, it is no exaggeration to say, the

[1] Mass. Bureau of Statistics of Labor, Sixteenth Annual Report, Boston, 1885, p. 466.

[2] *Ibid.*, p. 467.

[3] Mass. Bureau of Statistics of Labor. Tenth Annual Report, p. 95.

[4] Adams and Sumner, *loc. cit.*, p. 514.

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American workingman advanced in a manner unprecedented in this country in which steady progress has been the rule since the establishment of the Union."[1]

We regard it as superfluous seriously to argue further on the subject of the increasing misery of the American workingman. Those interested in the rise of American wages will find all the details in the Census reports, in the Aldrich Report (especially in parts III and IV) and in the Bulletins of the Bureau of Labor;[2] in these pages we do not feel at liberty to tax the patience of the reader with further statistical data.

We trust that it is evident, that the experience of all industrial countries without exception shows a steady and unprecedented improvement in the conditions of the working class. The tendency which was to lead to a breakdown of our economic organization not only broke down itself, but developed a counter-tendency in the exactly opposite direction.

Yet what is the attitude of the theoretical leaders of so-called scientific socialism? They lack the good sense to acknowledge the facts, and are hedging behind subterfuges and interpretations which, while seemingly exonerating Marx on one point, reduce him to the level of a nonentity on all points, and they end up by hurling in defiance another prophecy: "Until a great world-change takes place the proletariat must reckon with the fact that the good times are over and that the regular increase in real wages has reached its end."[3] And we often find expressed the fear and half-expressed the doctrinaire hope that technical developments, changes in the world market or in the political situation, may start the long-expected downward tendency. The rôle of the orthodox socialist in the whole matter is well characterized in what our lovable essayist, Samuel Crothers, has to say about Jonah.

[1] Adams and Sumner, *loc. cit.*, p. 511.

[2] Especially in Bulletin 77, Wages and Hours of Labor, 1890–1907, and Retail Prices of Goods, 1890–1907. We call particular attention to the tables on pp. 4 and 10. Interesting also is the budget material in Bulletin no. 54, particularly the tables on pp. 1133 and 1147.

[3] Karl Kautsky's, "Must the Proletariat Degenerate?" *The International Socialist Review*, February, 1909, p. 580.

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Jonah was a prophet by profession. He received a call to preach in the city of Nineveh, which he accepted after some hesitation. He denounced civic corruption and declared that in forty days the city would be destroyed. Having performed this professional duty, Jonah felt that there was nothing left for him but to await with pious resignation the fulfilment of his prophecy. But in this case the unexpected happened, the city repented and was saved. This was gall and wormwood to Jonah. His orderly mind was offended by the disarrangement in his schedule. What was the use of being a prophet if things did not turn out as he said? So we are told "it displeased Jonah exceedingly, and he was angry." Still he clung to his hope that, in the end, things might turn out badly enough to justify his public utterances.[1]

VLADIMIR G. SIMKHOVITCH.

(*To be continued.*)

[1] S. M. Crothers, By the Christmas Fire. Boston, 1908, pp. 58, 59.

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COLLEGE WOMEN AND RACE SUICIDE

THE fear of overpopulation, entertained by Malthus, has yielded to the fear of race suicide. Exclusive of immigration, the population of France is little more than holding its own, and the old-time families of Massachusetts appear to be on the road to extinction. Birth rates are falling in England, in far-away Australasia and in practically every country where the influences of modern civilization are at work. The preventive checks, which Malthus recognized in his second essay but thought unimportant, appear in lower birth rates, and the positive checks which he emphasized are suspended. Not only the food supply but wealth in general has increased more rapidly than the population, and the level of well-being has risen. The striking fact is that marriage and birth rates are lowest among the well-to-do. In the face of these facts, some writers maintain that the higher education of women is an important factor in lessening marriages and births. Since the number of women attending college has greatly increased in recent years and promises to increase further, this position deserves investigation. Does collegiate training lessen the probability of marriage and maternity? It is my purpose to ascertain how far this question admits of statistical inquiry, and to weigh some considerations of a non-statistical character.

Three kinds of statistical tables are employed in studies of this subject.

I. Tables giving the percentage of graduates who have married, and tables giving the average number of births per married graduate. The table[1] reproduced on the following page is illustrative. It indicates that the percentage married tends to grow with the age of the college. The percentage for any given class varies directly with the interval following graduation. It is at a maximum for the oldest classes and at

[1] *Cf.* M. Carey Thomas, Education in the United States (edited by Nicholas Murray Butler, 1900), vol. i, pp. 354, 355.

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a minimum for those most recently graduated. In January, 1900, of the oldest class at Bryn Mawr 40.7 per cent were married; of the first six classes, 30 per cent; of the first nine classes, 20.9 per cent; of the first eleven classes, 15.2 per cent.[1] In 1903, 55.4 per cent of the first ten classes at Vassar had married as compared with 28 per cent of the third ten classes.[2] The marriage rate for Vassar women jumped from 53.5 per cent for those at forty years of age to about 63 per cent for those at 47.[3] "Most of the Vassar graduates are not yet dead, and while there is life there is hope."[4] Similar conditions obtain among the alumnae of Wellesley and Smith.

INSTITUTION	OPENED	GRADUATES MARRIED (PER CENT)
Vassar	1865	35.1
Kansas	1866	31.3
Minnesota	1868	24.5
Cornell Syracuse Wesleyan	1870	31
Nebraska	1871	24.3
Boston	1873	22.2
Wellesley Smith	1875	18.4
Radcliffe	1879	16.5
Bryn Mawr	1885	15.2
Barnard	1889	10.4
Stanford	1891	9.7
Chicago	1892	9.4

Such statistics must be used with care to avoid unwarranted inferences. They no more establish a causal relation between marriage and the higher education of women than the occurrence of rain in a certain phase of the moon proves that the latter governs the former. The rapid increase in the size of graduating classes in recent years calls for a further word of caution. The first ten classes graduated at Smith numbered 358; the ten classes ending with 1905, 2051. The former

[1] Hall, Adolescence, vol. ii, p. 592. [2] *Ibid.*, p. 593.

[3] Frances M. Abbott, "College Women and Matrimony Again," *The Century*, vol. li, 1896, p. 797. [4] *Ibid.*

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averaged 36 members per class; the latter 205.[1] consequence is that comparatively few graduat

II. Tables contrasting the marriage and b and non-college women by age classe s, while disparaging to college wome ance, inasmuch as college students cor classes among whom marriages and births a y infrequent. In the first place, alumnae are with ceptions native-born. In Massachusetts, "the general ma age rate of the foreign born is three-fourths higher than that of the native-born."[2] "The average number of children living for every married woman was three-fifths higher among the foreign born than among the natives."[3] Similar conditions obtain in the country at large. In 1900, the estimated number of native white children under five years of age born of native mothers was 462 per 1000 native females of child-bearing age as compared with 710 children born of foreign-born mothers per 1000 foreign-born females of the same age. This condition is about equally marked in city and country.[4] That college students come almost wholly from the less prolific class is shown by an investigation published in 1885. Of 1290 graduates to whom inquiries were addressed 705 replied. Not only were practically all native born, but 83.26 per cent had native American parents, 2.84 per cent had a foreign mother and a native father, 3.54 per cent had a foreign father and a native mother, and only 9.79 per cent were of purely foreign parentage. Four graduates, or 0.57 per cent did not state the nativity of their parents.[5]

In the second place, not only do alumnae come largely from native families but they come from native families with relatively few children. Apparently the same foresight which leads parents to send their daughters to college causes them to limit

[1] Compiled from Catalog of Officers, Graduates and Non-graduates of Smith College, published by the Alumnae Association in 1906.

[2] Kuczynski, "The Fecundity of the Native and Foreign Born Population in Massachusetts," *Quarterly Journal of Economics*, 1901, vol. xvi, p. 34. [3] *Ibid.*, p. 185.

[4] Proportion of Children in the United States, Bureau of the Census Bulletin 22, 1905, pp. 23, 24.

[5] Report of the Massachusetts Bureau of Labor Statistics, 1885, pp. 475 and 513.

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the number of their offspring. Births vary inversely with industrial, educational and social ambition. They also vary with the economic status of the family. This appears in the following exhibit, which gives the average number of births per 1000 women between the ages of 15 and 50 in Paris, during 1889–93.[1]

In five very poor arrondissements	108
In three poor arrondissements	95
In five comfortable arrondissements	72
In two very comfortable arrondissements	65
In four rich arrondissements	53
In one very rich arrondissement	34

This table shows a birth rate more than three times as great among the very poor as among the very rich. A similar condition exists in London, Vienna and Berlin, and, by inference, in the United States. The significance of the foregoing lies in the facts that the gross money cost of four years at college ranges from $800 to $8000, and that, as a rule, only the fairly well-to-do feel that they can afford to give their daughters a collegiate education. Due allowance for what would be spent at home lessens somewhat the net money cost, but the minimum of $800 can not be much reduced. The laboring classes, persons with salaries ranging from $500 to $800 and the army of small tradesmen and farmers are apt to feel that they are without the necessary resources. In addition to the net money cost, the prospective loss of services or earnings and the slighter importance attached to education limit the utilization in these classes of the educational opportunities open to their children. But for the public schools, many would grow up in illiteracy. Only a few of the most capable, energetic and ambitious girls manage to work their way through college. The consequence is that a majority enter college with ideals unfavorable to early marriages and large families. The statistics of college women employed by some writers are most unhappily chosen for the purposes they have in mind. They deal chiefly with Vassar,

[1] See note in *Quarterly Journal of Economics*, vol. xiv, 1899, pp. 125–127, based on article by Jacques Bertilion in the *Bulletin of the International Journal of Statistics*.

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Wellesley and Smith, many of whose alumnae come from families standing well above the average in pecuniary means and social position. They also come largely from urban surroundings, where marriage and birth rates are relatively low. Probably there is no body of college women less comparable with those from the country at large. The following table classifies by occupation the fathers and guardians of four classes, 1905–08, at Smith.[1]

OCCUPATION	PERCENTAGE
Not stated	15
Professional	23
Merchants	18
Bankers, brokers, mining, railroads, corporation officers, insurance, *etc.*	15
Manufacturers	12
Clerks, salesmen, secretaries and superintendents	5.5
Farmers, gardeners, cattle raisers	4.6
Masons, contractors, *etc*	2.6
Machinists, artisans	2.4
Government positions	1.5
Laborers	.4

The data for this table are unsatisfactory. In 15 per cent of the cases the records are silent. In a number of instances it is uncertain to which category the case belongs. With few exceptions, moreover, each category contains those who range all the way from great affluence to those in very moderate circumstances. The figures do not disclose the relative numbers of the several species within each category. Certain things, however, stand out clearly. Urban pursuits greatly predominate. The laboring element is notably scarce. Positions of leadership, trust and responsibility are numerous. Smith girls come of ambitious parents, many of whom have achieved a large measure of professional, industrial and social success.

III. Tables contrasting the marriage and birth rates by age classes of college women and of their non-college sisters, cousins and friends. Perhaps, the best known study of this kind in the United States is that by Dr. Mary Roberts Smith,

[1] Compiled from the college records.

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comparing 343 college-bred and married women from thirty colleges and universities with 313 of their married relatives and friends.[1] This disclosed the following facts. Of the non-college women, 30 per cent married under 23, as compared with 8.5 per cent of the college women; for the ages 23 to 32 inclusive, the percentages were respectively 65 and 83.5; for ages beyond 32, they were 5 and 8 respectively. The number of non-college women marrying at 23 slightly exceeded the number marrying at any other age; for the college women the corresponding age was 25. The mean age of marriage for the non-college women was 24.3 years; for the college women, 26.3 years. These ages are to be compared with an average age of 25.4 years for women of all classes in Massachusetts during the twenty years ending in 1895. The number of living children of the college woman averaged 1.65 as compared with 1.875 in the case of the non-college woman. On the other hand, the married life of the college women averaged 9.7 years —1.4 years less than their friends, 2 years less than their cousins, and 2.9 years less than their sisters. The mothers among the college women averaged one child for every 4.82 years of married life; among the non-college women, one for every 5.51 years. At this rate, by the end of the child-bearing period, the small margin against the college women would be reduced. "The most striking result," says Dr. Smith, "has been a negative one, *viz.*, that there is by no means the degree of difference between the two classes in matters of health, marriage and child-bearing capacity that has been looked for both by the friends and by the enemies of the collegiate education of women." Mrs. Sidgwick's study of the women students of Cambridge and Oxford, published in 1890, yields similar results.

Four difficulties attend the statistical method just described. The first is the difficulty of getting a sufficient number of representative cases for comparison. In any given instance, the result depends upon the particular sister, cousin or friend with whom comparison is made. Marriages and births vary with

[1] Publications of the American Statistical Association, vol. vii, 1900–01, pp. 1–26.

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classes in the same college as well as between colleges. As with postal card canvasses of voters, the college women who reply to inquiries may not be representative. Out of 1290 alumnæ from twelve colleges, returns were secured from only 54.65 per cent for the investigation published in the Report of the Massachusetts Bureau of Statistics of Labor for 1885. A few years ago the Association of Collegiate Alumnæ undertook an investigation which has not yet been published,[1] but, unless the study includes a due proportion of non-members, the results will have little significance. In 1896, the membership comprised less than 36 per cent of Vassar, Wellesley and Smith graduates, and, for obvious reasons, the ranks contain an undue proportion with professional ambition.[2] Nor is it probable that the graduates of different institutions are equally well represented, or that the membership properly reflects the different varieties of college constituencies. Much more difficult is the work of getting cases fairly representative of the non-college relatives and friends of college women. There are no statistics of marriage and maternity among the former such as class organizations have gathered among the latter, and more or less clumsy devices are necessary to supply the deficiency. The statistics of the non-college friends are especially subject to error. The blanks sent to alumnæ may call for the sister and cousin of nearest age, but in the selection of friends the predilections of the individual necessarily enter. Any one familiar with the time and thought necessary to fill out correctly some of the blanks sent out and with the number which find their way into the waste basket, is apt to question the comparisons based upon the tabulated results, especially when the differences disclosed are slight.

A second and more serious difficulty is that college women and their non-college sisters, cousins and friends are not exactly comparable. As a matter of fact, the differences in aptitude and tastes are sometimes striking. As a rule, the former are more intellectual and possess greater foresight. Friendship

[1] May S. Cheney, "Will Nature Eliminate the College Woman?" *Magazine of the Collegiate Alumnae Association*, January, 1905, p. 7.

[2] Frances M. Abbott, *op. cit.*, p. 796.

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frequently rests as much upon unlike as upon like qualities, and the differences between sisters even are often marked. College women are rather comparable with women of similar intellectual capacities and tastes, and the difficulties in the way of such a comparison are well nigh insuperable. Nor are the ideals of women entering college and of their non-college relatives and friends always the same—a fact especially marked in the democratic conditions of the United States, where people in different circumstances intermingle with a good deal of freedom. The very fact that a girl prefers to go to college singles her out from her associates who have the opportunity but do not care to improve it, though this difference has probably become less marked. The fundamental assumption of Dr. Smith's study, that college women and their non-college associates are in every respect alike save that the former are college-bred and the latter are not, is unsound. This appears in the study itself, which not only shows that the non-college associates of college women marry younger, but that the non-college relatives and friends of the former marry still younger. College training can have nothing to do with the disparity in the latter case, because neither of the two classes of women compared are college-bred, and the correctness of the inference that it is responsible for the disparity in the former case is therefore open to question. Due allowance should be made for the fact that in entering college women give expression to their circumstances, ideals and character, as well as subject themselves to certain formative influences. The real point at issue is: what would the college-trained women have done if they had never attended college? and this is a question which it is obviously impossible to answer.

A third difficulty is that comparisons between the alumnæ of the earlier classes and their non-college associates may not hold for the classes of recent years. In the opinion of most observers, the type of college women has changed since women were first admitted to college. In the beginning, those attracted were for the most part a select few. The girl with scholarly ambition, who enters college primarily for the intellectual advantages or to increase her earning capacity, was rela-

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tively somewhat more common than today. Three-fourths of the 343 college women studied by Dr. Smith, graduates of more than twenty years ago, attained economic independence before marriage. Rumor goes that a teacher of twenty-five years ago said: "The girls are too confoundedly in earnest"; and in some institutions precautions were taken to prevent overstudy. Today a growing number attend for the sake of the general life, for the social advantages, because college training adds to their prestige in after life, because it is the fashion, because they are sent or because there is nothing else to do. The daughters of the professional classes and of those with an educated ancestry reaching back two or three generations are relatively fewer. Social events which had a very modest beginning have risen in importance until they loom large upon the horizon before and after their occurrence, and interrupt the continuity of academic work. Commencement week has become more and more a time of jubilation because it brings with it the renewal of friendships and of old associations rather than because it commemorates scholastic achievements. These conditions are notably true in the United States, where the higher education of women has reached a stage of development not yet attained in Europe. A few years ago, no less an authority than President Hadley began an article with the following words: "'The bachelor's degree,' says a French observer, 'is a social rather than a pedagogical institution.' . . . The college course is not valued solely or even primarily for its studies; it is valued most of all for the general associations into which it brings the student and the graduate."[1] The extent of the change which has taken place does not admit of measurement and is easily exaggerated. The growth of any social institution in popular favor attracts those with superficial interests, and a few camp followers should not be mistaken for the main body of an army. The social activities of students are open and above board, and are more likely to attract attention than time spent quietly at study. But it is clearly the prevailing opinion that intellectual aptitude and scholarly tradition have become less influential in determining who shall go to college and who shall not.

[1] *The Century*, vol. lxix, 1904–05, p. 864.

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The qualitative change in the student body is partly due to the increase in the number and efficiency of preparatory schools. In 1875 there were very few secondary schools of a sufficiently high grade to prepare women for college, and many colleges therefore opened with a preparatory department. It follows that few women were prepared to do work of collegiate rank and that the size of the entering classes was necessarily small. Today more approved instruction and appliances are at the disposal of practically every one in fitting for college, and the student body has become less homogeneous and more representative of the country at large. Perhaps nothing has done as much to popularize college training or to bring the colleges into closer touch with the outside world. Moreover, admission by certificate, by lessening the wear and tear of entering college, has contributed to the same result.

The industrial development of the country has also opened the gateway to college. Statistics indicate that the proportion of the family income spent for education increases more rapidly than the size of the income.[1] A college education is a luxury which prosperity has brought within the means of an ever-growing number. With the growth of cities, the daughters of the manufacturing and commercial classes are relatively more numerous. Furthermore, prosperity enables an increasing number in practically every occupation to send their daughters to college—a state of affairs which a panic followed by hard times would suddenly reverse.

Nor should the relation of a broadened curriculum and a freer elective system to the qualitative change in college women be overlooked. The courses offered in the academic department of many institutions have increased until twenty-five or thirty years would be necessary for a student to take them all. Greek, Latin and mathematics are no longer accorded their old-time preëminence. The tendency to multiply degrees has yielded to a counter tendency, and the A. B. degree has lost much of its historical significance. By placing the modern languages, physics, chemistry, biology, history, economics and sociology on a par with the classics the college has been brought

[1] Seager, Introduction to Economics, p. 77.

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into closer connection with the non-college world and a class of women to whom the old-time curriculum failed to appeal has been attracted. More recently some institutions have placed music on an equality with other subjects for the bachelor's degree. Moreover, the adjustment of studies to individual aptitude and taste through the elective system has lessened the drudgery of the college course. Methods of instruction have also become more attractive. Laboratories have become indispensable in teaching many of the sciences, and the lecture method of instruction is extensively employed. The preparation required of teachers has increased until the Ph. D. degree has become almost necessary to academic preferment. In employing teachers, also, greater insistence is placed upon ability to interest and instruct—a tendency furthered by the elective system, which brings different departments and teachers into competition. Again, the college is but the chief of several educational agencies. Grammar and high schools, libraries, Chautauqua circles, reading clubs, *etc.*, have multiplied and risen in efficiency. And, thanks to modern industrialism, which has given us postage, printing and paper at low cost, many subjects in the curriculum today are popularly treated in magazines and books which are widely read. The result is that the intellectual interests of the college woman and of her non-college associates have become more alike.

Another pertinent fact is that the parents of many members of the earlier classes fondly cherished a certain educational theory. They maintained that women were intellectually on a par with men, and thus sent their daughters to college in conformity with this ideal. From the popular notion that it was not worth while to send a girl to college, however important it might be to send a boy, they strongly dissented. Such parents looked upon a college education for their daughters as a necessity rather than a luxury, and willingly made great sacrifices in support of their ideal. To afford women educational opportunities equal to those open to men was the declared purpose of the founders of some institutions. This purpose was probably shared by the men who taught in colleges for women and by the students themselves more generally than today, and it gave

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a certain tone of seriousness to college life. Today, when thousands of women have been educated and the achievements of many of them have won general recognition, the intellectual equality of the sexes has ceased to be a burning issue and animates relatively fewer girls who come to college.

Finally, within a lifetime, the higher education of women was an innovation, and public sentiment was in large part either opposed or skeptical as to the result. This limited the attendance to those courageous enough to brave an adverse public opinion. The woman who was unconventional enough to blaze the way to college under these circumstances may have been somewhat indifferent to marriage and may have appealed little to men. Innovators are usually conspicuous for their individuality and aggressiveness. After the way to college had been opened, the movement proved contagious, and, aided by the newspapers and magazines, it increased in accordance with the laws of suggestion and imitation. In this way the early type of college woman gradually gave way to another, and college training not only ceased to be regarded with misgivings or disfavor but even became a prerequisite with some to social advancement. Owing to the diffusion of well-being and aspiration in the United States, very few classes were immune; and the expectations of even the most sanguine sponsors of the movement were far exceeded. The increased attendance of recent years has so overtaxed the facilities of some institutions as to necessitate limiting the number of students. Few undergraduates today realize the debt they owe to the pioneers who cleared the way. "It is heresy in our time," says Helen Keller, "to intimate that a young woman may do better than go to college."[1]

For these reasons the ranks of students are recruited from a wider constituency than formerly, there is greater diversity in the personnel of the students, and the college woman is less sharply differentiated, socially and intellectually, from the rest of the community. This is almost a necessary consequence of the increased enrollment of students. The chances are, therefore, that any disparity between the marriage and birth rates of

[1] "An Apology for Going to College," *McClure's*, vol. xxv, 1905, p. 190.

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college women and of their non-college associates has partially disappeared. This view is in keeping with the fact that the few gainful pursuits originally open to college women were in such places as boarding schools, which are seldom frequented by men and where the opportunities for marriage are relatively poor, while the careers opened in recent years often afford a less sequestered life. What is more, intelligent men recognize that college women are not abnormal creatures, and a growing number prefer them as wives. Man's position in the home, also, has grown less masterful, and marriage has become more consistent with an educated woman's self-assertion and independence of mind. In any event, a woman's scruples on this point usually vanish the moment she meets the man she loves—and not without reason, for the sequel often proves that women are fully as tactful and resourceful as men in maintaining their rights.

Thirty years ago, moreover, the tendency was to test the education of women by their contributions to scholarship or their professional success. This made the earlier classes feel that they were pioneers in a great experiment, the results of which could best be justified in careers outside the home. To settle down into the quiet of the domestic circle seemed like hiding one's light under a bushel. The demands of the public in this respect have become less exacting. The range of human knowledge has widened and deepened, and the importance attached to learning has increased, until a college education signifies little more than a high-school course a generation ago. Instead of its being held remarkable that a girl should attend college, it is now held, in many circles, to be remarkable if she does not. As a result, the college woman is more generally regarded as a normal individual of whom it is easy to expect too much. Alumnæ have increased until the position of the graduate seems far less elevated. Scholarly ability is as rare among women as among men, and the professional ambitions of women are more frequently interfered with by marriage, by the claims of parents or by the competition of other interests than is the case with men. With many, graduation ushers in opportunities for travel and social enjoyment

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unrestrained by academic work, and with the majority it marks the end of systematic study. Very little technical knowledge is acquired at college, and one is fitted little better for one pursuit than for another. The aim is to place a woman in command of her various latent powers. Nevertheless, the majority of college women, irrespective often of their capacity for independent careers, marry sooner or later. In lieu of the test of scholarship, therefore, the one more commonly applied today is the contribution to the efficiency of woman in the home. If a college education fails to prove helpful in situations generally regarded as commonplace, its utility to most graduates is likely to be small. The influence of this point of view will probably be as favorable to marriage as the former point of view was unfavorable.

A fourth difficulty emphasizes those already considered. The higher education of women is too young for satisfactory statistical investigation. It is only about fifty years since an American college first conferred a degree upon a woman. Of the colleges for women, Vassar was opened in 1865; Smith and Wellesley in 1875; and Bryn Mawr as recently as 1885. Many of the co-educational colleges and universities were either established or opened to women about the same time. Boston University was incorporated in 1869. Women were admitted to the University of Michigan in 1870, and two years later to Cornell University.[1] Again, some institutions did not rank as colleges until some years after they were founded. Mt. Holyoke was chartered as a seminary in 1836, but it did not become a college until 1888.[2] While Oberlin admitted women in 1837, and Antioch from her organization in 1853,[3] the total enrollment of women in our colleges and universities remained small in 1880. Of the institutions open to women, moreover, only a minority did work of collegiate grade. By 1890, the number of women enrolled in collegiate departments had risen to 10,054, and in the following fourteen years the number tripled. With-

[1] Report of the Commissioner of Education, 1903, vol. i, p. 1058.

[2] Johnson's Universal Cyclopædia.

[3] Report of the Commissioner of Education, 1903, vol. i, p. 1055, and 1904, vol. ii, p. 1484.

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out a single exception, each year witnessed the enrollment of a larger number than the preceding. In the three academic years ending in 1892, 21.8 per cent of all college and university students were women; in the three years ending in 1904, 30 per cent.[1] The great majority of alumnæ have been out of college less than fifteen years. Of 3552 Smith graduates, including the class of 1907, five-sevenths have graduated since 1894.[2] It is manifestly premature to collect satisfactory statistics of marriages and births among college women. This point in itself is sufficient to render any statistical investigation of the effect of college training upon marriage and maternity not only inconclusive but well nigh valueless.

The conclusion of this study is chiefly negative. It is apparent that the statistical tables which we have examined fail to establish any causal nexus between higher education on the one hand and the frequency of marriage and maternity on the other. The first kind of table is entirely in the air, the second institutes comparisons between women who are clearly not comparable, and the third leads to a lame and impotent conclusion. The problem does not admit of statistical determination. The phenomena are so involved that they can not be isolated for measurement. "Sterility is not a specific disease, but is the intricate product of causes as complex as civilization."[3] The results at which some writers arrive can be reached only by reading into the statistical data the conclusions which they wish to show, by closing their eyes to certain quite evident facts and by losing the proper sense of proportion. The effect is to mar their own reputations as thinkers and writers, and to bring statistical methods into disrepute. Any business man who conducted his affairs on no better established grounds could only by chance escape insolvency. In a future article it is my purpose to study the causes responsible for the decline in marriage and birth rates, and to ascertain their relation to the higher education of women.

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[1] *Op. cit.*, 1904, vol. ii, p. 1422.

[2] Compiled from Catalog of Officers, Graduates and Non-graduates of Smith College, and from official circulars.

[3] Hall, *op. cit.* p. 597.

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A RECENT DEVELOPMENT IN POLITICAL THEORY

"THE theory of the state," writes Le Fur, "and that of sovereignty which has been its basis for so many centuries, are at present overturned."[1] By this somewhat startling statement the savant of Caen characterizes the result of the energetic attack which has recently been directed against some of the most fundamental tenets of the orthodox school of political theorists. The leading propagandist of the disturbing doctrines is M. Léon Duguit, the brilliant though sometimes erratic Professor of Law at the University of Bordeaux.[2] In the controversy engendered by this fresh development we find Esmein[3], Mérignhac[4] and Hauriou[5] rejecting the new theory, and Le Fur[6], Berthélemy[7], and Jéze[8] accepting it in whole or in part. The conclusions reached by Duguit form, in many respects, a striking contrast to those arrived at in the system of analytical jurisprudence. Whether or not his theory can be accepted by those schooled in the latter system, it deserves fuller consideration than it has yet received at their hands. According to the standpoint from which one views it, the new theory may serve either to correct some of the deficiencies of analytical jurisprudence, or to emphasize some of its excellences.

The fundamental postulate upon which the Duguitian theory proceeds is the solidarity of men living in a given social group. This interdependency arises, first, from the common needs

[1] *Zeitschrift für Völkerrecht und Bundesstaatsrecht*, I, p. 13.

[2] See his principal works: L'état, le droit objectif et la loi positive (1901); L'état, les gouvernants et les agents (1903); Manuel de droit constitutionnel (1907); Le droit social, le droit individuel, et la transformation de l'état (1908).

[3] Droit constitutionnel, preface to third edition.

[4] Traité de droit public international, B. II, ch. i.

[5] *Revue du droit public et de la science politique*, vol. xvii, p. 346 *et seq.*

[6] *Zeitschrift für Völkerrecht und Bundesstaatsrecht*, I, pp. 13–23, 218–36.

[7] Droit administratif, pp. 42–45.

[8] Principes généraux du droit administratif, p. 8.

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which men have and which can be satisfied only by the common life, and, secondly, from the different needs which they feel and strive to satisfy by the exchange of services through the development and the employment of their different aptitudes.[1] The existence of the social solidarity having been posited, the notion of law (*droit*) is founded upon it. Since man can live only in society, and since society can subsist only by the solidarity which unites the individuals who compose it, it follows that upon man as a social being a rule of conduct is imposed which obligates him to do only that which tends to promote the social solidarity, and to respect only those acts of the individual which are consonant therewith. This rule of conduct is a veritable rule of law (*règle de droit, le droit objectif*) which determines the legitimacy of every act having a social bearing, whether it be that of a private individual or of a person invested with political authority. The governors themselves are juridically obliged to employ the force at their disposal to realize and to develop the social solidarity.[2]

Now, according to Duguit, there are no natural rights (*droits subjectifs*) inhering in a person irrespective of the law. In reality, there are no rights at all, but only the objective power to will and to act in accordance with the social solidarity. Every act, willed in accordance therewith is an act in the law (*acte juridique*), and gives rise to a subjective juridical situation. Such a manifestation of the will, therefore, ought to produce a social effect, *i. e.*, the object willed ought to be socially realized, and the obligation to coöperate towards the realization of that object is imposed upon every one who can contribute to that end.[3] The force of this obligation is derived from a social sanction which springs from the identity of the notion of social solidarity with that of rule of conduct.[4] In every society there will be found a consciousness of what acts are conducive to social solidarity and what interfere with it. A social reaction is

[1] L'état, le droit objectif et la loi positive, chap. i; Manuel de droit constitutionnel, p. 9.

[2] L'état, les gouvernants et les agents, p. 153.

[3] Manuel de droit constitutionnel, p. 18.

[4] L'état, le droit objectif et la loi positive, p. 116.

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directed against every individual act having a social bearing that is contrary to social solidarity. The fear of this social reaction impels men to act in conformity with the rule of law.

Such, in brief, is the Duguitian theory as to the source and foundation of law. It is worked out independently of the state, and is claimed to be true of societies not yet *étatisées*.[1] Law (*droit*) appears as a spontaneous formation, a natural product of social evolution. Let it be admitted, for the purposes of the present argument, that the social solidarity is an incontestable fact and that the notion of law may arise independently of the state. It may be asked, why should the notion of law spring from the consciousness of social solidarity rather than from other ideas. There is no certainty that those acts which are conducive to social solidarity will always be those which are dictated by the ideas of morality and justice, or by the ethical ideals of the people. There may even be a serious conflict at this point. Yet ideas of justice have an undoubted influence upon the formation of law.

It may be admitted that the social solidarity, being the state of circumstances upon which the law operates, may react upon it and modify it to a certain extent. According to the theory, however, the social solidarity is not only the basis of law, but also the goal toward which the rule of law tends. From this point of view it presents itself as a guide to practical conduct, but, as thus conceived, the rule of law is applicable only to those who adopt the end of social solidarity. What we have, then, is not a rule of law, but, to use the Kantian phrase, a hypothetical imperative. In other words, the rule of conduct derived from the fact of social solidarity is a rule of expediency or of *politique* as distinguished from *droit*. Confessedly, the rule is enforced only by means of a social sanction. The predication of the operation of law in spite of the absence of a legal sanction is due to the excessive emphasis placed upon the idea that law is determined by the nature of social relations. In rejecting, therefore, the worn-out doctrine as to the natural right of the individual, Duguit has but put in its place what may

[1] L'état, le droit objectif et la loi positive, p. 117.

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be called the natural right of society as the conditioning factor in the formation of law.

The recrudescence of the natural-right theory in another form is further evidenced by the retention of one of its most dangerous doctrines, namely, the existence of law and of rights anterior and superior to the law emanating from the state and higher than the rights conferred by the state.[1] "The science of public law," says Duguit, "is worthy of the name only if it establishes the basis of a rule superior to the state itself, and which fixes its positive and negative duties."[2] Duguit is enabled to take this position largely because of the inconsiderable rôle which the state plays in this theory. The state therein is only the "manifestation of a force," and is defined as "the man or the group of men who in fact in a given society are materially stronger than the others,"[3] or as "the simple fact of the differentiation between the governors and the governed."[4]

One is not surprised to find that, having reduced the state to this insignificant position, Duguit denies to the state the attribute of personality. To discard all fictions and to hark back to the solid foundation of indisputable facts is the avowed object of the system. The basal fact which may be posited without proof is, it is claimed, the individual mind.[5] The national consciousness has no objective existence, but is merely the simple coincidence of thoughts and desires.[6] All external manifestations of the mind are acts of the individual will. There is no collective will, nor any will distinct from the individual will. Hence the individual man is the only real person. Collectivities have no will of their own, and are therefore incapable of rights and duties, and hence cannot be persons.[7]

It follows from this atomistic view that the state has no reality distinct from the individuals who compose it, and is not,

[1] L'état, le droit objectif et la loi positive, p. 12; Manuel de droit constitutionnel, p. 2.

[2] L'état, le droit objectif, p. 615.

[3] *Ibid.*, pp. 5, 19. [4] *Ibid.*, pp. 261, 350. [5] *Ibid.*, p. 40.

[6] L'état, les gouvernants et les agents, p. 65. [7] *Ibid.*, p. 27.

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therefore, endowed with personality. Behind the word state Duguit finds only the individual wills of the governors and of the governed,[1] and this situation is the product of an historical differentiation. Since the state is not a person in point of fact, it ought not to be so considered in legal contemplation. It cannot be argued that the state is a person because the law (*loi*) has attributed to it the quality of personality; the state makes a law only when it is itself a person, and the personality of the state cannot, therefore, be derived from the law.[2] The pretended personality of the state thus has no basis either in law or in fact. It is merely an *a priori* theory and phantom of the scholastic imagination which it behooves jurists to discard as not only unnecessary but dangerous.[3]

The foregoing argument has seized upon and made skilful use of a weak point in the reasoning of some of the exponents of what I have ventured to call the orthodox theory of the state. The mistake which the latter have made is in supposing that they have laid a sufficiently deep foundation for public law in qualifying the state as a fictitious person. The merit of the Duguitian theory is that it brings into a clearer light the necessity of recognizing that the state is not a fictitious, but a real person. It may be admitted with Lasson that the state is an abstraction, but if so, it still arises from that which has actual existence.[4] If the personality of the state is a fiction, then the rights attributed to it by law are either the rights of the individuals composing it or else rights without a subject.[5] But neither of these alternatives can be accepted. In denying the personality of the state, Duguit destroys the basis of public law and arrives at the inadmissible conclusion that there is no distinction between public and private law.[6] In affirming that there is no collective will distinct from individual wills, and that

[1] L'état, le droit objectif, p. 242.

[2] L'état, les gouvernants, p. 79.

[3] L'état, le droit objectif, p. 241.

[4] *Cf.* Rehm, Allgemeine Staatslehre, p. 156.

[5] Jethro Brown, "The Personality of the State and of the Corporation," in *Law Quarterly Review*, vol. xxi, p. 368.

[6] L'état, le droit objectif, p. 187.

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there is no real group existence as distinguished from that of the sum of its members, the Duguitian theory clearly rests upon an insufficient account of the facts. It is a matter of common observation that a corporate personality is evolved from any aggregate of individuals acting together upon a common basis and with a common aim. The state is the most highly developed of such aggregates. This fact has been so clearly shown by Gierke[1] that it has since been almost idle to insist upon it. As he points out, each person possesses two capacities, the one individual, the other universal. The combination of the universal elements in the personalities of its component members forms the corporate personality of the state, the common "I" of Rousseau.[2] The personality of the state, therefore, springs from no legal fiction, but arises as a consequence of its very existence. The law supposes it preëxistent, and does nothing but regulate and limit it.[3]

The *impasse* into which one is led by the denial of the personality of the state will be seen from some further consequences that flow from it. Having denied the personality of the state, Duguit finds himself under the logical necessity of denying also the sovereignty of the state. He does not, however, undertake to say by what criterion he would distinguish states from those political communities which are not states. Apparently his definition of a state leaves no room for such a distinction, for the state is found wherever there is a differentiation between governors and governed, without regard to whether the governors are themselves subject to a higher power. This would make real states of Canada and the so-called states of the American Union, not to speak of less important communities. Duguit would perhaps not deny this. It is impossible, he says, to accept the idea of the indivisible sovereignty of the state in its federal form. "Here the same territory and the same men are subject at the same time to the commanding

[1] "Das deutsche Genossenschaftsrecht", "Die Grundbegriffe des Staatsrechts," *et cetera*, in the *Zeitschrift für die gesammte Staatswissenschaft*, XXX.

[2] Das deutsche Genossenschaftsrecht, II, p. 36 *et seq.*

[3] Michoud, "La notion de personnalité morale," in *Revue du droit public et de la science politique*, vol. xi, p. 15.

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power of the federal state and the member state. The state, then, is not the superior collectivity existing on a given territory, since on the same territory exist two states."[1] Yet the federal state is one nation. "The sovereignty, therefore, is not always the single and indivisible will of the nation personified. Now, either the sovereignty is nothing or it is that single will of the nation; since it is not always that, it does not exist."[2]

It is hardly necessary to point out that Duguit has here confused the exercise of sovereignty with its substance. Sovereignty may, of course, be exercised by the organs or agents of the state without themselves becoming sovereign. It was perhaps inevitable that Duguit should have failed to make this distinction, since, having denied the personality of the state, there was no person in his system capable of retaining the substance of sovereignty. Hence he is forced to suppose that the organs and agents of the state exercise their powers through their own will and not because such powers are delegated to them by the will of the state. It is obvious that this reduces the state practically to a nonentity.

As a consequence of the failure to attribute to the state its proper position, the fundamental distinction between state and government is constantly lost sight of. For example, we are told that one result of the French Revolution was to limit by law the powers of the state,[3] so that the state was no longer able to do everything by law. As evidence of this, citation is made of the provision in the Constitution of 1791 to the effect that the legislative power should not be competent to make laws of a certain character.[4] Thus, in speaking of the organ, Duguit loses sight of the organism which determines the competence of the organ.

This is, perhaps, a hypercritical comment, for, having reduced the state to a nonentity, there is no room for a distinction between state and government. The state exists only in the imagination; the sole reality is the government. The

[1] L'état, les gouvernants et les agents, p. 673.

[2] L'état, le droit objectif, pp. 324, 325.

[3] *Ibid.*, p. 251.

[4] *Ibid.*, pp. 553, 122, note 4.

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government is defined as the class or body which monopolizes the force in a given society.[1] Duguit is impressed with the idea that there must be some limit to the legitimate exercise of this force. Having discarded the state, he can, of course, find no limitation in the sovereign will of the state. If there is any sovereignty in the Duguitian theory, it is the principle of social solidarity. We have seen that from this principle Duguit derives the law (*droit objectif*), which is a rule of conduct in perpetual evolution, resulting from the continually changing forms of the social solidarity, and varying constantly according to time and place.[2] At any particular time and place this law furnishes a criterion whereby to judge the legitimacy of any exercise of will or force on the part of the governors. Now, the will of the governors has no inherent value greater than that of a private individual. The act of neither is legitimate unless it is in accordance with the law (*droit objectif*), which stands above both. This law is the norm by which the validity of every legislative, judicial and even administrative act is determined.[3] The governors have no right to command, *qua* governors, but only in so far as their commands are conformable to the objective law. Consequently, when the governors formulate a rule of law (*droit*) in a positive law (*loi*), they do not create this rule of law, which is anterior and superior to them; they can only apply it. Hence the positive law is defined as the constatation of an objective rule of law, and not as the creation of such a rule.[4] Herein Duguit finds the limit to the legitimate exercise of will or of force by the governors. There may, however, be a law (*loi*) set by a regularly constituted legislative organ which is contrary to the objective law (*droit*). Duguit does not hesitate to say that such a supposed law is not law, is entirely without legal force, and that no one is bound to obey it.[5] The term law (*loi*) is thus limited to those legislative acts which are conformable to the objective law (*droit*).

[1] L'état, le droit objectif, p. 411. [2] *Ibid.*, p. 428.

[3] Le droit social, le droit individuel et la transformation de l'état, p. 73.

[4] L'état, le droit objectif, p. 423. [5] *Ibid.*, p. 424.

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Now the question which at once arises is: How is it to be determined whether any particular positive law is conformable to objective law or not? Unfortunately Duguit does not satisfactorily answer this question. If the existence of positive law in actual enforcement is itself to be taken as the invariable evidence that such positive law conforms to the objective law, it is obvious that the conception of a higher law becomes superfluous. Unless, however, this be the test, it is difficult to see how the conformity or non-conformity of positive law to objective law is to be determined. Duguit does not admit that there can be any formal mode of determination, but he seems to suggest that the content of the law may furnish the test. Thus, he says, if the legislator, in making a new law, should accord an indemnity to those who would undergo a disadvantage therefrom, this would be an admission that such law (*loi*) is contrary to the more fundamental law (*droit*).[1] From this one might infer that, if a law abolishing slavery should indemnify the slave-owners, it would be an admission that the law was contrary to *droit*. If this is a legitimate deduction, the test is certainly a defective one, even in those few cases to which it could be applied. That there is really no method for the determination of this question in his system, Duguit practically admits when he expresses a desire for the creation of a high tribunal, composed of the representatives of all the social classes, which should judge the legality, so to speak, of the law (*loi*).[2]

The attempt which Duguit has made to erect a law anterior and superior to the law emanating from the state will not, it is needless to say, appeal very strongly to those schooled in analytical jurisprudence. In this respect his theory appears as an offshoot of the *Naturrechtlehre* for which many continental thinkers have so marked a predilection. Time was when the conception of a natural law opposed to the will of the sovereign was useful as forming a basis for resistance to oppression. Now that practically the whole people have become the paramount power in the state, there is less need for a theory in which the

[1] Le droit social, le droit individuel et la transformation de l'état, p. 94.

[2] *Ibid.*, p. 58.

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state is subjected to a higher law. Such a theory, if acted upon in a practical way, leads to anarchy. If there were any constituted authority for determining the content of the higher law springing from social solidarity and for reconciling any conflict which might arise between such higher law and the ordinary legislative law, then such authority would be the organ of the state legally competent to promulgate its sovereign will, and we would then have no law higher than the law emanating from the state. But if, on the other hand, there is no such constituted authority, which Duguit tacitly, if not expressly, admits, then every individual must be allowed to judge for himself when the legislative law fails to conform with his conception of the higher law springing from the social solidarity. Unless, however, the legislative law does so conform, it is not law.[1] Hence we arrive at the conclusion that, from the material point of view, law is indeterminable.

As we have seen, Duguit denies that the will of the governor is superior in value to that of the lowest of the governed. The governor is powerless to formulate a command, because one individual will cannot impose itself as such upon another individual will.[2] Hence, the mere fact that a supposed law is promulgated by the government or by a particular organ of the government is not a conclusive indication that such a law is really law. Duguit thus rejects the formal test of law,[3] and we are left without either formal or material tests for the determination of law. If such be the situation, only the exertion of superior force can prevent it from degenerating into anarchy. There would be no *de jure* government, for all authority would be *de facto* merely, and there would be no law except *Faustrecht*. The basis of obedience would thus be destroyed, and resistance to authority would be legitimate whenever the individual judgment should so decide.

The denial of the personality and of the sovereignty of the state, and the predication of the existence of a law higher than the law emanating from the state are, from the point of view of

[1] L'état, le droit objectif, p. 424. [2] *Ibid.*, p. 366. [3] *Ibid.*, p. 502.

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analytical jurisprudence, the cardinal defects which vitiate the whole system. In these particulars, Duguit is perhaps not uninfluenced by his environment. He sees the French Government exercising an apparently unchecked power, both constitutionally and administratively. If the state were a real person, it might be expected to act as a check to the arbitrary action of the government. The tendency, therefore, is to deny the personality of the state, and to seek outside the state some limit to the arbitrary power of the government. Duguit exhibits in many instances the old repugnance to absolute power. "The notion of sovereignty," he says, "leads fatally to the absolutism of the state,"[1] and cannot, therefore, be accepted. This is an argument for the truth of those things whose alternatives are conceived to be undesirable. Duguit has not yet arrived at the conception that there must be somewhere a legally absolute and uncontrollable will,[2] and that that will belongs not to any part or organ of the state, but to the whole state as a political organism. If there is no law above the state, and if the state possesses a legally sovereign will, Duguit does not understand how the state can be the subject of rights and duties. For him there is no sufficient explanation of this fact in the theory of the self-limitation (*Selbstbeschränkung*) of the state, which Jellinek has so admirably elaborated as a corollary from the self-determination (*Selbstbestimmung*) of the state.[3] He does not take sufficiently into consideration the fact that the modern state is preëminently a legal state (*Rechtsstaat*), and that, though materially omnipotent, it is formally limited, since it can act only through law, and is bound by its own laws so long as they remain in force. With Duguit the *Rechtsstaat* and the *Kulturstaat* coalesce,[4] and the result is an amphibious creation which is neither the one nor the other. In combining these two concepts within the scope of his general theory, he is enabled to arrive at an explanation of a larger range of facts and their causes than would otherwise

[1] L'état, le droit objectif, p. 614.

[2] *Cf.* Burgess, Political Science and Comparative Constitutional Law, vol. i, p. 52.

[3] Gesetz und Verordnung, p. 197 *et seq.*; Allgemeine Staatslehre, p. 438 *et seq.*

[4] L'état, le droit objectif et la loi positive, p. 305.

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be possible. Yet the gain therefrom is problematical, for, in covering a broader field, his theory loses in definiteness.

In nearly every part of his theory, Duguit differs radically from what I have ventured to call the orthodox doctrines. Yet scientific progress is often promoted by the conflict of opposite ideas. It may be that the value of the Duguitian theory will be found to lie not so much in its positive content as in its method and aim. It is undoubtedly an attempt to place some of the most important concepts of political science upon a more philosophical basis, by coördinating political, economic and social theory into a complete and harmonious system. The Hegelian will perhaps see in the attempt an approach toward a truer conception of political science as an integral part of the *Weltordnung*. The Austinian will still be inclined to doubt the value of the results. Yet it cannot be denied that the Duguitian theory will be useful in promoting a healthy scepticism of commonly received doctrines, and in subjecting them to a more searching examination than they have hitherto received. The difficulty, if not the impossibility, of making a scientific synthesis which shall give an entirely true and perfect account of actuality becomes more and more apparent. It is perhaps inevitable that every tolerably complete system which attempts to marshal a highly complicated group of phenomena into a harmonious and systematic arrangement will do violence to some facts and leave no logical place for others. Each competing system must be judged by the consistency with which it is developed from its premises, and by the fruitfulness of its conclusions. Perhaps, after all, the conflict between the Duguitian theory and analytical jurisprudence is more apparent than real. It may be that each, when viewed from its peculiar standpoint, is no less true than the other. Both are perhaps necessary in order to obtain a complete and well-rounded view of the main concepts of political science.

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FISHER'S RATE OF INTEREST[1]

THERE is less novelty, either in the course of the argument or in the results achieved, in the *Rate of Interest* than in Mr. Fisher's earlier volume on the *Nature of Capital and Income*. Substantially the whole of it lies within the accustomed lines of that marginal-utility school of economics for which its author has so often and so convincingly spoken. It is true to the canons of the school, even to the point of making the usual error of logic in the usual place. But while it makes no material innovation, beyond a new distribution of emphasis among the factors held by the school to determine the rate of interest, it carries out the analysis of these determinants with unexampled thoroughness and circumspection, such, indeed, it may fairly be hoped, as will close the argument, on the main heads of the theory at least, within the school. There is all the breadth and facility of command over materials, which Mr. Fisher's readers have learned to expect, such as to make the book notable even among a group of writers to whom such facility seems native. If fault is to be found with this exposition of the marginal-utility doctrines it is scarcely to be sought in details of fact or unauthorized discrepancies of logic. Exception may be taken to the argument as a whole, but scarcely from the accepted ground of the marginal-utility school. Nor should that remnant of the classical school which has not yet given its adherence to the marginal-utility doctrines readily find fault with an exposition which finds its foundations in so good and authentic a utilitarian theorist as John Rae.

The theory of interest arrived at is the so-called "agio" or discount theory, already familiar to Mr. Fisher's readers and substantially in accord with the like theory spoken for by Böhm-Bawerk. Mr. Fisher takes issue with Böhm-Bawerk on the one grave and far-famed point of doctrine concerning the "Roundabout Process." And on this head, I apprehend, it will be conceded that the later writer occupies the stronger and more consistent position, whatever exceptions may be taken to his line of argument in refutation of the doctrine in dispute.

[1] The Rate of Interest: Its Nature, Determination and Relation to Economic Phenomena. By IRVING FISHER. New York, The Macmillan Company, 1908.—xxii, 442 pp.

See POLITICAL SCIENCE QUARTERLY, vol. xxiii, p. 112, for a review of Fisher's Capital and Income by the same author.

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In his critical survey of competing and inadequate interest theories, occupying the first four chapters of the volume, this doctrine of the roundabout process comes in for more serious attention than all the rest; and justly so, since it is an alien in the school—a heresy which has been brought in by oversight. Leaving on one side for the moment all question as to the merits of this doctrine, it may readily be shown not to belong in the same explanation of interest with the agio theory, at least not as a proposition correlative with the theorem about the differential preference for present over future income. Interest and the rate of interest is a matter of value, therefore to be explained in terms of valuation, and so in terms of marginal utility. Within the scheme of value theory for which Mr. Fisher and Böhm-Bawerk are spokesmen no analysis of a value phenomenon can be brought to a conclusion until it is stated in terms of marginal utility. All fundamental propositions, all theorems of the first order in this theoretical scheme must be stated in these terms, since these terms alone are ultimate. Facts of a different order bear on any question of value, in this scheme, only as they bear on the process of valuation, which is a matter to be stated in terms of marginal utility. This scheme of theory is a branch of applied psychology—of that school of psychology which was in vogue in the early nineteenth century; whereas the roundabout process is not a psychological phenomenon—at least not of the same class with the doctrines of marginal utility. It is a technological matter. The roundabout process has a bearing on the rate of interest, therefore, only as it bears on the main theorem concerning the preference for present over future income; that is to say, the doctrine of the greater productivity of the roundabout process is, at the best, a secondary proposition, subsidiary to the main theorem. The valuations out of which the rate of interest emerges take account of various circumstances affecting the desirability of present as contrasted with future goods; among these circumstances may be the greater productivity of the roundabout process; but this is as near to the core of the problem as that phenomenon can be brought. The problem of the rate of interest in the marginal-utility system is a problem of applied psychology, more precisely a problem of the hedonistic calculus; whereas the alleged greater productivity of the roundabout process is a technological phenomenon, an empirical generalization concerning the mechanical efficiency of given industrial ways and means. As an explanation of interest the doctrine of the roundabout process belongs among the productivity theories, as Mr. Fisher has indicated; and as such it cannot be admitted as a competent, or indeed a relevant,

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explanation of interest in a system of theory whose purpose is to formulate a scheme of economic conduct in terms of the hedonistic calculus.

It is quite conceivable that in some other system of economic theory, worked out for some other purpose than the hedonistic explanation of value, the roundabout process might be brought into the central place in a doctrine of interest; but such a doctrine would have as its theoretical core, upon which the theorist's attention should be concentrated, the physical production of that increment of wealth that is presumed to go to interest, rather than the pecuniary determination of the rate of interest through which this increment is distributed among its claimants. Such a doctrine would belong in a theory of production, or of industry, not in a theory of distribution, or of business. But the marginal-utility system is primarily a theoretical scheme of distribution, and only secondarily a scheme of production; and, therefore, in so far as it aims to deal with the current economic situation, it is or aims to be primarily a theory of business traffic, not of the processes of industry, particularly not of technological efficiency or of technological changes. This is well shown, *e. g.*, in Mr. Fisher's discussion of invention (ch. x, ch. xi, sec. 4, ch. xvii, sec. 6).

Apart from all question of consistency or conclusiveness within the premises of the marginal-utility school, the test to which Mr. Fisher's theory of interest must finally be brought is the question of its adequacy as an explanation of interest in modern business. Mr. Fisher has recognized this, and the most painstaking and most admirable portions of the volume are those which discuss interest as involved in current business transactions (*e. g.*, ch. xii–xvi). In modern life distribution takes place almost wholly in pecuniary terms and by means of business transactions. In so far as it does not, *e. g.*, in the distribution of consumable goods within the household or in the distributive use of public utilities, it does not bear sensibly on any question of interest, particularly does it not bear immediately as a determinant on the rate of interest. Interest, as demanding the attention of the modern economist, is eminently a pecuniary phenomenon, and its rate is a question of business adjustments. It is in the business community and under the guidance and incitement of business exigencies that the rate is determined. The rate of interest in any other bearing in modern life is wholly subordinate and subsidiary. It is therefore an inversion of the logical sequence when Mr. Fisher, with others of the school, explains pecuniary interest and its rate by appeal to non-pecuniary factors. But such are the traditions of the school, and such a line of analysis is imposed by their premises.

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As has been remarked above, Mr. Fisher's development of the doctrine of interest is true to these premises and traditions to a degree of nicety never excelled by any of the adepts. These premises or postulates on which the marginal-utility scheme rests are derived from the English classical economists, and through them from the hedonistic philosophy of the earlier decades of the last century. According to the hedonistic postulates the end and incentive is necessarily the pleasureable sensations to be derived from the consumption of goods, what Mr. Fisher calls "enjoyable income" or "psychic income" (see Glossary, pp. 339–340); and for reasons set forth in his analysis (ch. vi), it is held that, on the whole, men prefer present to future consumption. This is the beginning of economic (marginal-utility) wisdom; but it is also the end of the wisdom of marginal-utility. To these elemental terms it has been incumbent on all marginal-utility theorists to reduce their formulations of economic phenomena. And from the acceptance of these limitations follow several characteristic excrescences and incongruities in Mr. Fisher's theory, presently to be spoken of.

To save argument it may be conceded that the hedonistic interpretation of human conduct is fundamentally sound. It is not requisite for the purpose in hand to discard that postulate, however frail it might prove on closer scrutiny. But if it be granted that the elemental motive force of economic life is the hedonistic calculus it does not follow that the same elemental calculus of preference for present over future sensations of consumption is to be directly appealed to in explanation of a phenomenon so far from elementary as the rate of interest. In point of historical fact anything like a consistent rate of interest emerges into the consciousness of mankind only after business traffic has reached some appreciable degree of development; and this development of business enterprise has taken place only on the basis and within the lines of the so-called "money economy," and virtually only on that higher stage of the money economy specifically called a "credit economy." Indeed interest is, strictly, a phenomenon of credit transactions alone. But a money economy and the consequent credit transactions which give rise to the phenomena of interest can emerge only on the basis afforded by the mature development of the institution of property. The whole matter lies within the range of a definite institutional situation which is to be found only during a relatively brief phase of civilization that has been preceded by thousands of years of cultural growth during which the existence of such a thing as interest was never suspected. In short, interest is a business proposition and is to be explained only in terms of business, not in terms

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of livelihood, as Mr. Fisher aims to do. Business may be intimately concerned with livelihood, it may even be that in modern life business activity is the sole or chief method of getting a livelihood, but the two are not convertible terms, as Mr. Fisher's argument would require; neither are business gains convertible with the sensations of consumption, as his argument would also require.

The reason why these terms are not convertible, and therefore the reason why an argument proceeding on their convertibility or equivalence must reach a fallacious outcome, is that a growth of institutions intervenes between the two—granting that the hedonistic calculus is the primary incentive and guide of economic activity. In economic life, as in other lines of human conduct, habitual modes of activity and relations have grown up and have by convention settled into a fabric of institutions. These institutions, and the usual concepts involved in them, have a prescriptive, habitual force of their own, although it is not necessary at every move to ravel out and verify the intricate web of precedents, accidents, compromises, indiscretions and appetites, out of which in the course of centuries the current cultural situation has arisen. If the contrary were true, if men universally acted not on the conventional grounds and values afforded by the fabric of institutions, but solely and directly on the grounds and values afforded by the unconventionalized propensities and aptitudes of hereditary human nature, then there would be no institutions and no culture. But the institutional structure of society subsists and men live within its lines, with more or less questioning, it is true, but with more acquiescence than dissent.

Business proceeds on the ground afforded by the institution of property, more particularly of property as rated in terms of money values. The rate of interest is one of the phenomena involved in this business traffic, and its theoretical explanation must run in terms of business, and so in terms of money. When the question is removed from this institutional basis and is pushed back to the grounds on which property and money are conceived to rest, it ceases to be a question of interest and becomes a detail of the analysis of the phenomena of value. But value, as understood by living economists, has no existence apart from the institution of property—since it is concerned with the exchange of property. Interest is a pecuniary concept having no validity (except by force of an ambiguity) outside of the pecuniary relations of the business community, and to construe it in other, presumably more elementary, terms is to explain it away by dissolving it into the elements out of which it is remotely derived, or

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rather to which it is presumed to be remotely related. The phenomena of modern business, including the rate of interest, can no more be handled in non-pecuniary terms than human physiology can be handled in terms of the amphioxus. The difference is that between explaining current facts and endeavoring to explain them away.

There is (probably) no science except economics in which such an endeavor to explain the phenomena of an institution in terms of one class of the rudiments which have afforded the point of departure for the growth of the institution would be listened to with any degree of civility. The philologists, for example, have various infirmities of their own, but they would have little patience with a textual critic who should endeavor to reduce the Homeric hymns to terms of those onomatopoetic sounds out of which it is presumed that human speech has grown. What fortune would have overtaken E. B. Tylor's *Researches into the Development of Mythology, Philosophy, Religion, Language, Art and Custom*, if he had set out to explain away the facts and show that these institutions are of no effect because he knows something about the remote sources from which they have come? Scientific vagaries of that heroic stature are not unknown among ethnologists, but it is to be noted to the credit of the craft that they are known as vagaries.

Mr. Fisher's theory of the rate of interest suffers from the same oversight of this difference between explaining facts and explaining them away, as do the common run of marginal-utility doctrines. So, since interest is to be formulated in terms of consumptive hedonism, instead of in business concepts, and since price is to be formulated in the same terms, there arises an unavoidable confusion between the two, as appears in the discussion of "Appreciation and Interest" (ch. v. and elsewhere). In the main, this discussion belongs properly in a theory of prices. Appreciation and depreciation of the standard of payments may of course—so far as they are foreseen—affect the rate of interest; but they are, after all, phenomena of price. Business transactions run in terms of money. Interest is rated in money and paid with a view to a money gain. Many contingencies bear on the chances of such gain, and changes of price are notoriously among these contingencies. Speculative buying and selling look to this contingency chiefly, and may look to such a change in the price of the goods bought or sold as shall offset the interest on the funds tied up in the speculation, but the rate of interest does not thereby come to be conceived or stated in terms of the advance or decline of the price of goods. Appreciation and depreciation, if foreseen, are circumstances to be taken into account by lender and borrower very much as the productivity of

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the roundabout process (if that doctrine be allowed) will be taken into account in making the rate of interest. But this state of the case does not make either of these phenomena a rate of interest; nor does it reduce interest to a technological matter on the one hand or to a variation of prices on the other hand.

Now and again, especially in ch. xiv (pp. 276–285), Mr. Fisher cites facts showing that neither investment nor interest are counted in terms of livelihood or in the sensations of consumption, and showing also that questions of livelihood touch these phenomena only uncertainly and incidentally. He well shows (a) that business men habitually do not (adequately) appreciate variations in the commodity-value of money, and (b) that with rising prices they simply do business at a high money profit and are content to pay a high rate of interest without suspecting that all this has any connection with the "commodity interest" of Mr. Fisher. (*Cf.* the passages cited from Baxter and from Jevons). But his hedonistic preconceptions lead him to take note of this state of things as exceptional and anomalous, whereas, of course, it is the rule. It is not only the rule, but there is no avoiding it so long as business is done in terms of money, and in the absence of a foregone conclusion these facts should persuade any observer that money value has an institutional force in the counsels of business men.

This chapter (xiv), and in good part the succeeding one, explain interest without support from or reference to Mr. Fisher's "agio" theory, although they are offered as an "inductive verification" of that theory. Except for the author's recurrent intimations, nothing in this inductive verification bears on, or leans on, the doctrine of a preference for present over future income. Not only so, but chapter xiv, incidentally helped out by various passages elsewhere, goes far to disprove that the rate of interest is a matter of the preference for present over future income, taking "income" in Mr. Fisher's sense of the term. There is a strikingly ingenuous passage in ch. xv, (p. 315): "For him [the farmer] the lowest ebb is in the fall, when gathering and marketing his crops cause him a sudden expenditure of labor or of money for the labor of others. To tide him over this period he may need to borrow. . . . The rate of interest tends upward." The farmer, in other words, bids up the rate of interest when his crops are in hand or are coming in; particularly just after he has secured them, when he is required to meet certain pecuniary obligations. But the farmer's crops are his "income" in the case assumed, and when his income has come in, at this springtide of his income stream, his preference for present over future goods should logically be at its lowest, and, indeed, there need

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be little question but such is the case. There is also no doubt that the farmer is willing to bid high for funds at this period; and the reason seems to be that then the fresh access of income enables him to bid high, at the same time that he needs the funds to meet pecuniary obligations. His need of borrowing is due to the necessity of marketing his crops and so "realizing" on them; that is to say, it is a business or pecuniary need, not a matter of smoothing out the income stream. Farming is a business venture in modern times, and the end of business is gain in terms of money. The cycle of business enterprise closes with a sale, a conversion of "income" into money values, not conversely, and the farmer is under more or less pecuniary pressure to bring this pecuniary cycle to a close.

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REVIEWS

Modern Egypt. By THE EARL OF CROMER. New York, The Macmillan Company, 1908.—Two volumes: 594, 600 pp.

Lord Cromer has written a remarkable book. As a record of achievement it stands second to no other narrative of recent and contemporary events; as a feat of book-making it is a tribute to the author's high ability as a scholar and writer. The subject is a country of only some ten to twelve million of people, and the period covered is a third of a century. The author was the British resident, technically Agent and Consul-General, really viceroy, for about twenty-four years. During that time, as a result of carefully studied policies and a tactful administration, the country has been regenerated. This regeneration is the subject of the author's story.

The tale is, on the whole, well told. There is no concealment of anything necessary to unfold the process of development; and, what is surprising, the narrative is, for the most part, both readable and interesting. Dry details of administration, statistics and finance are so managed as to shed light in dark places and illuminate the broader outline in an entertaining way. The author's mastery of his theme, his skill in exhibiting his processes, political and literary, his joy in achievement and the record of it and finally the coy, unobtrusive, self-sufficiency which is pleasantly discernible, all combine in an economic and historical study which is almost a work of art.

There are eleven hundred and sixty-five pages of text, and of these over seven hundred are historical. The rest are devoted to what Lord Cromer styles "the puzzle of Egypt." The history, being substantially contemporaneous and told by an interested actor, must necessarily be read with allowance for the fact that it deals throughout with controverted matter, that the writer is a special pleader, that he is a Briton and that in the main he represents the views of the conservative English leaders. The other European parties in interest, Turks, French and Italians, have not seen the facts of history as Lord Cromer presents them. Europe has never formally acknowledged England's occupancy of Egypt and the Soudan, and the Gladstonian liberals have not accepted in silence the author's statements of many matters relating to internal politics, especially as regards the tragic fate of Gordon. As

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to the Africans in interest, the Turkish pasha class, the upper class Egyptians of Arabic descent, the Christian Copts and the peasantry or fellaheen, Lord Cromer himself admits that whatever else has been won among them their affection has not, and that they are quiet and law-abiding under the awe of superior force.

Under the guidance of British policy and of Lord Cromer's resolute hand, the population of Egypt has increased over one-third; the marvels of engineering have irrigated the desert so as to enlarge the arable area in even higher proportion; labor under the lash and extortionate usury have been abolished; so, too, has slavery in its more offensive forms; thousands of native-born have been trained to be useful administrators; foreign capital, secure under British protection, has poured in like a flood; foreign population, permanent and transient, increases yearly. In short, the whole record of material prosperity reads like the work of a genius in the Arabian Nights. And yet beneath all there is the diapason of anxiety and to some extent even of apology.

In so far as contact with west Europeans can corrupt the oriental, the work of corruption was complete in the time of Ismail and while Lord Cromer was still in India. It is easy to magnify this corruption, but in the main the eastern degenerate merely exchanges oriental for western vices. These being extraneous to his tradition and habit are more offensive in the parade he makes of them than in their native lairs, just as the converse of western men steeped in unnatural oriental vice is equally disgusting and doubly wicked. Accordingly, the period of this record has no unhappy distinction in evolution of that sort, nor in increase of rottenness. On the contrary, while the implication of the text is that under existing methods little can be done to banish gross licentiousness from Egyptian towns, the evils have at least not been allowed to increase. There has been an ever-growing use of alcoholic drink, but on the other hand a steadily diminishing use of hasheesh, which is even more soul-destroying than spirituous liquor.

It is not possible to solve the puzzle of Egypt, even for the most valiant reviewer, and it is not even possible to state it more concisely than Lord Cromer does in the four hundred pages he devotes to it. Indeed, his clarity makes his statement almost a solution of the puzzle, and this portion of the volume is for that very reason the most valuable.

To a casual observer of Egyptian affairs complexity is perplexity; but to the faithful reader this complexity and intricacy reveal the secret of the whole matter. For the first time in history the Briton and the Oriental have had a fair field of rivalry and no quarter; and the former is

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winning. Lawrence Lowell requires two volumes of about equal size to explain the intricacies of British rule in Great Britain, Mr. Bryce another two for those of the American Commonwealth. The two governmental systems differ widely from each other and the Egyptian even more widely from both. But all three are alike in their labyrinthine processes. It is only a man who can thread that maze and rule under the two high Saxon systems that can also rule under that system of contradictions and exasperations which time and battle and compromise and fanaticism and race traits have produced in Egypt. The Turks cannot work it because of their peculiar faith and the loathing which the Arab feels for the Ottoman. The French could not work it because of their logical, rationalistic temperament and their emotional impatience. It is only a Cromer and his congeners that can play that intricate game at all; they like to play it and play it well because they are born sportsmen, keen, ingenious, self-reliant and slow to wrath. It is the course quite as much as the goal which interests them.

The congeries of governmental shifts which Lord Cromer enumerates might seem to constitute such a nuisance as to demand immediate attention. The two most offensive features are internationalism and Pashadom, this last meaning the venom of displeased officials. The latter is steadily diminishing in vigor and influence; it may some day vanish; the former is another question. There is nothing sadder in the bird's-eye view of present-day Europe than the ever-increasing bitterness of nationalities one toward the other. Each petty shred of power seems more and more important. Nearly a score of nationalities have in some degree prescriptive rights in Egyptian administration, and there seems little prospect that any one will surrender its bit of privilege, however unimportant. In other respects there has already been some simplification of procedure; there is likely to be more. It is not likely that the forces of reaction will recover lost ground; the forces of reform will probably gain more and more, however slowly.

The picture has its shadows. The author believes the Egyptians incapable of self-government for some time to come, if ever; but he unhesitatingly poses two alternatives for Egypt's future—incorporation in the British empire or autonomy. Of the two he emphatically pronounces for the latter; neutralization he believes impossible. The British garrison must remain for at least a few generations. Meanwhile the heterogeneous populations, Moslem or Christian, European, Asiatic or African, may be fused into a homogeneous body fit for self-government. This is, of course, the dream or vision of the Young Turks for the whole Turkish Empire; but can the leopard change his

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spots? What is the resultant human being to become? An Ottoman patriot, of course. So, too, in Egypt the final personage must be an Egyptian patriot. Both such type persons would be Moslems, at least the overwhelming majority would be. Yet no one in the least familiar with Mohammedanism and its systems, social or political, can for an instant imagine the Moslem ideal capable of realization. Islam knows and can know nothing but theocratic politics and personal will. Both Turkey and Egypt have gone too far on the sunset road for a return to that.

Lord Cromer cherishes other conceptions which seem equally utopian. England must have a well-regulated sympathy for Egypt! Such large generalizations seem the stuff of which dreams are made. Egyptians must be more and more engaged in high administrative work! Yet he devotes pages to showing how all cultivated Egyptians, in so far as they have any adaptability to Western ways, prefer immeasurably the French to the British methods: the antinomy seems insoluble. Another conception, that of securing equal justice and low taxes for the Egyptian, is more specious: equal justice or anything approximating it is quite the most expensive luxury which Western peoples enjoy.

Another shadow is the total disregard of the historical, archæological and æsthetic questions which have arisen in the administration of Egypt. The recent arraignment of British rule in Egypt by "Pierre Loti" is more or less partisan and bitter: but it is well founded. Irrigation is vastly important, water works are essential to the material development of Egypt. Cotton, cotton and more cotton: if only the British empire could be independent as regards that staple! If only Egypt and the Soudan could furnish enough cotton for the mills of Manchester without the need of importation from America! It is an ideal. But meantime, what about the homes of the native Africans inundated by storage reservoirs, what about their little alluvial farms? Gone forever. What about Philae and all the many sites of the first historic importance, which are sinking beneath the red floods stored to improve the crops of cane and increase the sugar growers in their cupboard and their store. It is a nice question of ethics about which nothing important is said in these volumes. Almost the closing words of the book are these: "Whatever may be the moral harvest we may reap we must continue to do our duty, and our duty has been indicated to us by the Apostle St. Paul, 'We must not be weary in well-doing.'" Cotton and sugar: history and art. Is the matter of well-doing quite so clear?

W. M. Sloane.

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The Struggle for American Independence. BY SYDNEY G. FISHER. Philadelphia, J. B. Lippincott Company, 1908.—Two volumes: 574, 585 pp.

For a decade or more Mr. Fisher has been known to students of early American history as a writer who holds original views and who has the ability to express them. He has written on social life in colonial times, on the history of Pennsylvania, on the evolution of the constitution, and he has produced a "true history" of the Revolution. The last-named book he has now expanded into the two substantial volumes which are the subject of this notice. He writes, one would think, rapidly and without much revision. Colloquialisms occasionally mar the effect of his paragraphs. His sentences are sometimes carelessly formed. But on the whole Mr. Fisher writes naturally and well. He is not a literary artist and does not seek dramatic effects. His interest lies on the political and administrative side of things. Yet he is never dull, and his material is so arranged and presented that the reader's interest is sustained to the end.

Mr. Fisher, with reason and justice, makes some unfavorable criticisms of current historical writing so far as it concerns the Revolution. He expresses surprise that our best writers have chosen other periods or foreign subjects, though this one was quite worthy of their pens. He observes that the period has never been thoroughly investigated. The exact position of Great Britain toward us at the outbreak of the Revolution, the part played by her acts of trade in the contest, the attitude of the loyalists toward the questions and policy involved, the effect of the Revolution on the later colonial policy of England, are some of the points on which Mr. Fisher finds the histories defective. It is noteworthy that for a correct understanding of all these points a knowledge of the early eighteenth century is necessary. No one who begins with the Revolution will be able to do them justice, not even Mr. Fisher himself. He also complains of the strong Whig bias which appears in most of our histories and of the lack of a broad judicial spirit which is too often apparent. Still more specific points, and those to which he devotes much attention in his text, are the strategy —if so it might be called—of Sir William Howe and Lord Cornwallis.

These volumes on the *Struggle for Independence* show that Mr. Fisher has made a really serious and ambitious attempt to write a history of the American Revolution. He has developed the subject systematically. He has passed in review all the main features of the long struggle. He has not been unmindful of its remoter connections.

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He has not written distinctively as an American or as an Englishman, as a conservative or as a liberal, but toward the general issues involved, he has preserved an impartial temper. He is not afraid to say that the colonists were not loyal, except in a limited and restricted sense. The loyalist receives as fair treatment as does the patriot. There is as near a total absence of Chauvinism in the work as one could well desire. It may indeed be said that the prevailing sentiments of the middle colonies—of Mr. Fisher's own section—in modernized form are reflected in his pages.

As the title of the book indicates, it is devoted mainly to the war for independence and less to the debates and irritating events which were preliminary to it. In the author's treatment of the war two features stand out in bold relief. They are his severe condemnation of Sir William Howe and of Lord Cornwallis, of both as strategists and of the former also because of his supposed sympathy with the American cause. The view presented of Howe is essentially a repetition of that which was defended in the author's *True History of the American Revolution*. Though a very unfavorable view of Cornwallis was expressed in the earlier book, it has now been elaborated in detail and brought into connection with the entire history of the war in the South. As a result of this attitude Sir Henry Clinton is thrown into bold relief as by far the ablest commander whom the British sent over during the war, while Burgoyne appears as the victim of an undeserved fate—that, as he himself said, his army was doomed to be sacrificed. In Mr. Fisher's opinion the French alliance was not the turning point of the war. He contends that the French fleet accomplished little until the fortunate conjuncture at Yorktown in 1781; that such aid as they did give was bestowed rather grudgingly because their chief interest lay in the West Indies. According to his view the policy which Clinton pursued of holding New York, Charleston and Savannah, and from these and other points making descents upon exposed ports and sections of country was correct and sure in no long time to force the Americans into submission. In 1780 and 1781 Washington's force was so weak that it could not keep the field. The course therefore which Cornwallis should have pursued was to hold South Carolina and Georgia, after they had practically been conquered, and leave it to Clinton and the British fleet to do the rest. Instead, he marched northward, leaving South Carolina open to the advance of Greene, and fell into the trap which was set for him at Yorktown. Thereupon the North ministry fell and independence was secured.

Many or all of these things have been said before and the sources

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from which the ideas have been derived are easily accessible in print. Had they not been so, Mr. Fisher would hardly have known them, for his references are exclusively to printed authorities, and his reading of these has apparently not been exhaustive. But the view of the war to which they lead is a reasonable one, and it is more fully set forth by Mr. Fisher than by any previous writer.

The shortcomings of this history are quite as evident as are its excellencies. It is not the outgrowth of a thorough study of the antecedents of the Revolution. Hence questions of law and political theory receive scant attention. The process by which the old governments were overthrown and the new ones built up is not systematically described. Social and economic conditions in the colonies have not been investigated. The specific conditions in England which determined its attitude toward the colonial question are not adequately explained, and in regard to this matter Mr. Fisher might have made better use of the early labors of Lecky and Trevelyan. The influence of the West on the Revolution is largely ignored. Ample materials are accessible for a more thorough treatment of the conditions affecting the American army throughout the war, and this is a subject of fundamental importance. So also is the subject of finance. In his treatment of the campaigns in the South Mr. Fisher might have profited by reading McCrady's volumes on the Revolution in South Carolina.

H. L. OSGOOD.

Verfassung und Verwaltung der Städte: England, Frankreich, Nordamerika. By F. W. HIRST, H. BERTHÉLEMY, FRANK J. GOODNOW and DELOS F. WILCOX. (Schriften des Vereins für Sozialpolitik, Band 123). Leipzig, Duncker und Humblot, 1908.—227, 299 pp.

Some three or four years ago it was announced that a series of volumes dealing with the structure and functions of municipal government in the various countries of Europe and America would be published in that well-known and highly serviceable undertaking, the *Schriften des Vereins für Sozialpolitik*. This announcement led students of the subject to hope that these volumes would bring together, in compact form, a great deal of valuable information which has hitherto been obtainable only under considerable difficulties, and that they would present a comparative survey of municipal organization which would be comprehensive, accurate and informing. Several numbers in the series have now appeared, among them small volumes

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dealing with Prussia, the smaller German states, Austria and Switzerland. The present number, which forms the largest volume of the series, gives attention to the municipal systems of England, France and the United States.

The discussion of English municipal administration is contained in three chapters written by Mr. F. W. Hirst of the London *Economist*. The first of these presents a general outline of the subject under the title "Municipalities in England," a summary which is well-proportioned, clearly written and capable of performing excellent service as a general introduction to the study of English urban government. The other two chapters deal with London and Leeds respectively, and illustrate the special administration of the metropolis on the one hand, and the governance of a typical provincial borough on the other. Both contain rather lengthy historical introductions which scarcely seem to be appropriate in view of the limited space which is available for the discussion of contemporary administration, but otherwise these chapters will serve a useful purpose. Mr. Hirst's mastery of his subject is unquestionable, but in the limited scope which is afforded him he has hardly been able to do himself adequate justice.

About sixty pages of the volume are allotted to an essay on the municipal institutions of France by Professor Honore Berthélemy of the University of Paris, a scholar who is well known to American students through his admirable treatises on French administrative law. Special attention is given to the evolution of communal institutions, but present-day organization receives its due share of attention, and the writer even finds it possible to give his readers some general idea of the social and economic activities of the French municipalities. A special chapter on the administration of Paris would have been a welcome addition.

A fifty-page essay by Professor F. J. Goodnow summarizes the position and powers of cities in the United States in a way which affords a model of concise presentation, while Dr. Delos F. Wilcox, in the remaining two hundred pages of the work singles out for special study and analysis nine important American cities, New York, Chicago, Philadelphia, St. Louis, Boston, Baltimore, Cleveland, San Francisco and New Orleans. The information which he presents is timely, interesting and, on the whole, reasonably accurate; but the arrangement of matter is not always as well considered as it might be. There is a good deal of needless detail on the one hand, and some important omissions on the other. Much that is included (particularly that which is of a statistical nature) is at best of only transitory value, and one

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may question whether its inclusion in a work of this sort will prove of any real advantage.

As for the publishers they have done their work atrociously. The table of errata spreads itself over six pages, and even then it does not include a moiety of the errors in typography. It is difficult to understand how a publication of such high standing should have dealt with its contributors in this ungainly fashion.

WILLIAM BENNETT MUNRO.

HARVARD UNIVERSITY.

Problems of City Government. BY L. S. ROWE. New York, D. Appleton and Company, 1908.—358 pp.

The Government of American Cities. BY HORACE E. DEMING. New York and London, G. P. Putman's Sons, 1909.—ix, 323 pp.

The Government of European Cities. BY WILLIAM B. MUNRO. New York, The Macmillan Company, 1909.—ix, 409 pp.

The interest which the American people are taking in the problems of city government is evidenced by the appearance of these three books in almost as many months. This interest, however, is of comparatively recent development. For, as Mr. Deming points out, it was only about 1880 that the people of the United States became aware that there really was a municipal problem in this country. That the interest is now a keen one and is causing the municipal problem to be subjected to investigation from more than one point of view is to be seen both in the thoroughness of the work done and in the breadth of treatment which are characteristic of these, the most recent studies on the subject. Although these books have, as has been intimated, appeared almost simultaneously, each treats a different phase of the subject and none of the three duplicates to an appreciable extent the work done by either of the others.

Dr. Rowe is thus more interested in the functions of city government than in any other part of the general subject. It is true he devotes one chapter to a consideration of municipal organization, but the primary purpose of his book is the endeavor to ascertain, from an examination of the historical development of cities, from a consideration of the character of urban populations and from a comparison of existing municipal organizations, what is the proper theory of municipal functions. His general conclusions are that the most highly developed municipal life is possible only upon the condition that the urban com-

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munity in its political corporate capacity has a very wide sphere of activity. Dr. Rowe is therefore an advocate of municipal ownership and operation of public utilities. He advocates this policy primarily not because he considers that it has been pecuniarily profitable to the cities which have adopted it; for he admits that the reverse result has in many instances followed the adoption of this policy and endeavors to find excuses for these failures. His adhesion to the general policy is occasioned by the belief, which is being continually expressed in his pages, that a healthy and vigorous community life is possible only where that community in its political organization has numerous opportunities for activity. He carries this theory so far that he even deprecates the domestic virtues which lead the ordinary American city dweller to prefer his comfortable fireside to the social attractions of the café and the stirring life of the street which are so characteristic of foreign urban life and which, in his opinion, explain the greater power of social coöperation possessed by the people of foreign cities.

That there is considerable truth in what Dr. Rowe says cannot be denied. Comfortable family life and attractive domestic surroundings undoubtedly do much to reconcile men to shortcomings in city government. But it is to be remembered that an efficient city government is not an end in itself. If the city dweller can as a matter of fact secure a comfortable home life under a city government which has very narrow powers, even if he is indebted for most of his comforts to the private corporations which it has become the fashion of late to hold up to hatred, contumely and contempt, he is probably as well off as if he owed them to a city of wide powers. For government after all is only one of several means by which man in society secures the *summum bonum* of social existence, that is, a comfortable life with opportunities for intellectual and moral development.

A natural result of the general purpose which Dr. Rowe has had in mind is the devotion of a number of chapters to a consideration of the treatment of public utilities. One of the most interesting and instructive of these chapters is the one on "Municipal Ownership and Operation of Street Railways in Germany."

Mr. Deming's book, different from Dr. Rowe's, pays hardly any attention to the matter of municipal functions but is devoted, as its sub-title indicates, to a study of municipal organization and the relation of the city and the state. It is further written in the light of the conditions at present existing in American cities and is in large measure confined to the question so universally and continually before the eyes of the municipal reformer in the United States, *viz.*, what changes must

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be made in the position and organization of American cities in order to make them efficient organs for the discharge of the functions which they may possess. Mr. Deming's book is a plea for greater municipal independence and for a more simple form of municipal organization than at present exists in the United States. More concretely, he demands that the American city be relieved from the tyrannical control now exercised over it by the state legislature and that such control as the state shall exercise over cities be vested in administrative bodies to be fashioned after the English Local Government Board.

Mr. Deming's comparison of American with foreign municipal institutions is confined to a consideration of those to be found in Great Britain. One of the best chapters in the book is that on "The English Municipal System." This is a succinct and yet, so far as concerns fundamentals, complete description of the position and organization of the modern British city.

While Dr. Rowe lays great emphasis on the necessity of a wide sphere of municipal activity Mr. Deming puts great stress on democracy although it must be admitted that the reader does not obtain a very clear idea as to what democracy stands for in Mr. Deming's mind. Apparently it stands for universal manhood suffrage in the form in which we find it in the average American city. On account, perhaps, of the lack of hope which the municipal reformer in the United States usually evinces as to any change in suffrage conditions, Mr. Deming does not apparently consider it worth while to consider the question of the suffrage as affecting cities in the United States. Assuming that the suffrage will for a long time remain as it is, Mr. Deming confines his attention to the consideration of such changes in the ballot law as will give the people the widest opportunity to express their will as to city government. He does, however, take occasion repeatedly to deprecate the present city organization in the United States in so far as it relies on great numbers of elective officers.

This failure to consider suffrage conditions in the United States may be regarded by some as detracting from the scientific character of Mr. Deming's work, particularly in so far as his attempt to draw from English experience any conclusions applicable to American cities is concerned. For the one thing which differentiates the English from the American city is to be found in the suffrage conditions. So many more English than American voters are taxpayers, and so many persons who have no direct pecuniary stake in the city are denied the right to vote at city elections in England that the social foundations of city government are quite different in the two countries. The only excuse

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for the omission of all reference to these considerations on Mr. Deming's part is to be found in the fact that he has in his book formulated "a program of democracy"—a program really for American democracy, which, to be palatable to that democracy and to have any chance of adoption, must assume the existence of universal suffrage in practically its present form and also that an efficient city government can be based upon it.

Be that as it may, all who are interested in American city government can hardly fail to approve the concrete suggestions which Mr. Deming makes and which, it may be said, are advocated in the main also by Dr. Rowe. These if adopted would in all probability cause great improvement in American conditions. The form in which these suggestions are incorporated, *viz.*, the reprint of the "Municipal Program of the National Municipal League," for which Mr. Deming ought in large degree to receive the credit, is such that the suggestions themselves can readily be followed by those to whom they appeal and upon whom the burden of charter-making has been imposed.

Dr. Munro's book in contrast with the others which have been noticed is not concerned with the support of any thesis, nor for the most part has it been written with the idea in mind of discovering any relation between European and American city government. It is true there are occasional comparisons of conditions as found in European cities with those existing in the United States. But these comparisons are few and far between and of relative unimportance. Dr. Munro has set himself to describe in as detached and objective a manner as possible what he considers to be the important features of city government in France, Prussia and England. He refrains from comparing not only European and American city government in general but also the city governments of the various countries to which he devotes attention. Indeed, each of the three chapters into which the body of his work is divided is a work complete in itself upon the city government of some one country. The fullest treatment is accorded to England, his chapter on English city government being almost as long as his other two chapters.

The work which he has done is on the whole the most comprehensive, accurate, painstaking and thorough work which has been done in the English language on the subjects which are treated. The objectiveness of the treatment and the copious references to the sources of his information give what Dr. Munro has done an authoritativeness as to descriptive details which no other book on the subject possesses.

The reader may at times, however, regret that an author of Dr.

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Munro's ability has not given some expression of the conclusions which he must have reached as to the relations between American and European city government. At the same time it is somewhat ungracious to complain of this characteristic of the book. For the author must have considered that any departure from the objective attitude which he decided to assume would have interfered with the purpose he had in mind when he undertook the work of presenting to American students these pictures of the organization of European cities. And to say that he has done his work well is to give him the most perfunctory praise. There is hardly a detail of city government in the countries subjected to examination which he has not covered. He has not been content to describe the formal organization of European cities but has traced out the relations between those cities and the states in which they are situated and has considered as well the extra-legal conditions of parties and nomination operations which often exercise so profound an influence in modifying the formal governmental system provided by the law. The work which he has done is a credit to American scholarship.

Those whose interests are of the reforming rather than the scientific character have now at their disposal a vast amount of information as to the machinery of European city government upon which they can rely in drawing conclusions from European experience applicable to American conditions. They can see in their true light the relations of city and state government in Europe and of city government and suffrage conditions.

The student of city government also owes a great debt to Dr. Munro for the bibliography of city government in France, Prussia and England contained in the fourth chapter.

F. J. GOODNOW.

Primary Elections. By C. EDWARD MERRIAM. Chicago, The University of Chicago Press, 1908.—xi, 302 pp.

Professor Merriam has written an important and timely volume on a theme that is troubling both politicians and reformers all over the country. With a due regard for the place of practical experience in American politics, he opens his work with an account of the historical development of primary legislation from the California law of 1866 down to the latest Western statute, and describes the types of control established over specific party operations during each of the three periods: 1880–90, 1890–99, 1899–1908. This historical survey is followed by a brief study of the attitude of the courts toward the leading features of primary legislation, and by two chapters on the work-

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ings of direct nominations and the results. Professor Merriam's conclusions on the merits of the new system are of the highest practical importance and may be summarized as follows: the direct primary as a rule elicits a larger party vote than the convention system, but the cost of campaigning, however, is greater; the apprehension that direct nominations would result in an avalanche of candidates is not confirmed by the facts; there is wide divergence of opinion as to the number of votes to be required for nomination, but the tendency is to accept the plurality rule; no satisfactory generalization can be made on the question of whether the new method secures better men than the old; a year's membership in the party and a declaration of general support are sufficient tests for party members desiring to participate in the primaries; it is not likely that the direct nomination system will achieve its full results until the number of elective officers is materially reduced, the original Australian ballot (without party emblems) restored and the merit system extended; the direct primary is not a sudden Western fad but the outcome of many years of tentative and experimental legislation; and finally it is to be regarded as an opportunity, not as a result. Professor Merriam has written so clearly, briefly and systematically that an intelligent citizen may secure by an evening's study a solid grip on one of the pressing political questions of our day while the professed student is inducted into the whole subject of governmental control over party nominations and supplied with guidance for advanced work in the form of an appendix of statutes, digests and bibliography.

CHARLES A. BEARD.

Law: Its Origin, Growth and Function. By JAMES C. CARTER. New York, G. P. Putnam's Sons, 1907.—vii, 355 pp.

This work, bearing date of the twentieth century, is in reality to be placed a quarter of a century earlier. It cites the authorities, considers the problems and breathes the spirit of twenty-five years ago. Its formula of justice (p. 337) is taken from Herbert Spencer, its conception of law comes from Savigny through Sir Henry Maine. It takes us over the beaten paths of the controversy as to the Austinian conception of law (citing Austin, by the way, from the incomplete, pirated, New York version of Campbell's edition) and the well-worn ground of the English controversy over codification of the middle of the last century. Through the latter it leads us, by means of English versions, over the older German controversy, without a reference to the modern German discussion. There is a suggestion that the author knew of a

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recent German code, but the single reference to it brackets it with the Code Napoléon (p. 257). The case against codified law which the Germans have been making since 1898 was evidently unknown, although some of the contributions of Ehrlich, Stammler, Jung, Mayer, Zitelmann and Sternberg antedate the writing of the present work from two to five years. Moreover, the English partial codifications of the past twenty-five years and the results of the labors of the commissioners on uniform state laws in America appear not to have been present to the author's mind. As the same theses are maintained in his address before the American Bar Association in 1890, and the discussion of the limits of legislation has the ring of the decisions upon "right to pursue a lawful calling" and "liberty of contract" of the eighties and early nineties, we may be fairly certain of the date from which he speaks.

Berolzheimer points out that the German historical jurists, having overthrown the premises of the eighteenth-century natural-law school, and having no philosophical premises of their own, sought for the nature of law in deduction from the Roman legal sources, Germanic legal institutions and juristic developments therefrom. In other words, the Roman sources were for them a sort of natural law.[1] It is curious to see something of the same sort in Mr. Carter. While he claims to be an historical jurist, his philosophical position is that of natural law, with individualism and the principles of Anglo-American common law standing for nature. A passage in this connection is worth quoting.

> There is a guide which, when kept clearly and constantly in view, sufficiently informs us what we should aim to do by legislation and what should be left to other agencies. This is what I have so often insisted upon as the sole function both of law and legislation, namely, to secure to each individual the utmost liberty he can enjoy consistently with the preservation of the like liberty to all others. Liberty, the first of blessings, the aspiration of every human soul, is the supreme object. Every abridgment of it demands an excuse, and the only good excuse is the necessity of preserving it. *Whatever tends to preserve this is right, all else is wrong. To leave each man to work out in freedom his own misery or happiness, to stand or fall by the consequences of his own conduct, is the true method of human discipline.*[2]

It is this kind of doctrine which makes constitutional provisions as to life, liberty and property barriers in the way of social progress, which leads the Court of Appeals of New York to adopt judicially as a criter-

[1] System der Rechts und Wirthschaftsphilosophie, ii, § 4.

[2] The italics are mine.

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ion of constitutional interpretation the theory of the English individualists that exercise of governmental power ought to be held down to the unavoidable minimum,[1] and which leads to the overthrowing of so much labor legislation for infringement of liberty of contract. While lawyers affect to despise philosophy in law, much of their legal thought is dominated by an obsolete philosophy.

"Justice is not wholly fair play between individuals, as our legal philosophy would have it,—it is fair play between social classes."[2]

Not only is Mr. Carter persuaded that the true field of legislation is a very narrow one, but he is clear that courts should be jealous of encroachment, and conceives that strict construction of statutes in derogation of the common law and assumption that such legislation is declaratory only constitute a "wise doctrine" (p. 308) to apply to modern legislation. Probably, in his case, this belated assertion of a doctrine which proceeds on the supposition that legislatures are in what Dicey calls the "quiescent stage"[3] is to be attributed in part to his reading of the English historical jurists and incidental absorption of Savigny's views, in part to the common-law hostility to legislative lawmaking which we must expect to color the opinions of a profound student of our Anglo-American legal system and in largest part to the deep-seated aversion to legislation as a form of law which the hasty and ill-considered Draft Codes have brought about in the bar of New York. Only the latter circumstance can explain a deliberate assertion in 1905[4] that statutes are of necessity crude, ill-adapted to the cases to which they are to be applied, unenforced and incapable of enforcement (p. 3). It would not be difficult to support a like indictment of American case-law by numerous examples. But neither indictment would be well founded in fact. Not merely the growing point but also the center of gravity of our law is shifting to legislation. And national congresses and conferences, state boards and commissions, legislative committees and reference bureaus are making legislation not less intelligent and well considered and much more expressive of the general will than judicial decision.

Mr. Carter's theory of the nature of law is that custom is not merely a source of law, but *is* law, and *vice versa* that law is custom. He says:

. . . so far as social conduct is concerned, custom is not simply one of the

[1] People *v.* Coler, 166 N. Y., 1.

[2] Professor Commons in *American Journal of Sociology*, vol. xiii, page 764.

[3] Law and Public Opinion in England, chap. v.

[4] See preface, p. vii.

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sources of law from which selection may be made and converted into law by the arbitrary and independent *fiat* of a legislature or a court, but that law, with the narrow exception of legislation, is *custom and like custom, self-existing and irrepealable* [p. 173].[1]

If this means that habits of judicial and professional thought and action are exceedingly stubborn and hard to change, even by drastic legislation, the fate of codes of civil procedure bears witness to its truth. But it is a truth that ought not to be urged as a principle of legal science upon the Bench and Bar of today. If it means that customs of popular action are law—*i. e.*, are administered in judicial proceedings as rules of decision—the inability of the custom of merchants to treat a partnership as an entity to make any great impression on the common-law theory of partnership may give us pause. In fact Mr. Carter's favorite illustration of the rules of games refutes his whole position. He says in his address on "The Ideal and the Actual in Law":

> In all athletic games . . . a referee is appointed to see fair play. There are no commands proceeding from a sovereign or superiors to subjects or inferiors; but there is a standard of justice founded upon the habits and usages of the game, and there is consequently a law which it is the function of the referee to declare. We have here in miniature the whole scheme of human justice.[2]

True as this may have been *Consule Planco*, in 1890 it was far from true and in 1907 it was utterly untrue. Austin's conception comes nearer to the actual situation in base-ball, foot-ball or even whist. National commissions, rules, committees and congresses make the rules of games for us today, and legislation is the source, the form and the formulating agency, to the exclusion of habits, usages or the standard of justice founded thereon.

One need not say that any book from Mr. Carter's pen deserves and repays careful and thoughtful reading. The case of the common-law lawyer against legislation is put clearly, forcibly and skilfully by a master of advocacy. As an argument of an advocate retained to make a case against the imperative theory and the activity of American legislatures, it is admirable. As a contribution to jurisprudence, it has appeared too late, and it is to be doubted if the author's memory is well served thereby.

ROSCOE POUND.

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[1] The italics are mine.

[2] Report of the American Bar Association, xiii, 325.

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Il Concetto della Natura e il Principio del Diritto. By Giorgio del Vecchio. Torino, Fratelli Bocca, 1908.—174 pp.

In trying to explain how it came that the English pickets at Balaclava, posted to give warning of the approach of the enemy, had themselves to be warned and narrowly escaped capture, Kinglake[1] reminds us that in time of peace and in time of war, as a part of the soldier's routine, "there goes on all night a reiteration of set questions and answers which tends to avert real watchfulness by suggesting that a mere formal sign of not being absolutely asleep will sufficiently answer the purpose." He adds: "A man's wits may be easily deadened, they can hardly be sharpened, by formula." As we are compelled in civilized countries to administer justice by formulas, we must continually bear this danger in mind. We must not forget that our formulas were designed to express ideas of right and justice and as means to promote right and justice, and that the moment we forget those ideas and lose sight of those ends and treat the formulas as existing for their own sakes, we are preparing for a day when our agencies of justice will fail and we shall have to be saved by some juristic *deus ex machina*—just as irregular action saved the pickets at Balaclava. Since the time of the Stoics, men have appealed to "Nature" to save ethical, political and juristic thinking from this danger. The appeal to reason and to the sense of mankind for the time being as to what is just and right—whether an appeal to reason against form, as with the Stoics, or against the hard and fast rules imposed by an obsolete religion and the conditions of a primitive city-state, as with the classical Roman jurists, or against authority, as in the juristic and political thinking of the seventeenth and eighteenth centuries—has been called a vouching of natural right or natural law. Indeed, the appeal of the sociological jurist against the ultra-individualism which eighteenth-century natural law has fixed in American legal thought is often the same appeal and lacks only the name, which has been preëmpted by its opponent. Sternberg, in his recent review of another work of Professor Del Vecchio, similarly suggests that the appeal of those who call for equitable application of law in Germany to-day comes essentially to the same thing.[2]

In a prior booklet,[3] now in its second edition, Professor del Vecchio had considered the consciousness of right as a source or creative agency

[1] Invasion of the Crimea, II, chap. 22.

[2] *Archiv für Rechts- und Wirthschaftsphilosophie*, II, 296.

[3] Il sentimento giuridico (Rome, 1906, 2 ed., 1908).

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of law in that it is always of necessity critical of existing law. He points out that as a source and a critique, a creative and a destructive agency, it is in continual conflict with its own results. One thinks, of course, of the individualism of American juristic thought, a legacy of "natural law" of the past, and of the appeal to reason against it of the sociological jurists. One is reminded, also, of the views of Kantorowicz (Gnaeus Flavius), Stammler and Brütt. "But," says Professor Del Vecchio, "right, as a perfect expression and articulate logical verity, cannot be found in the juridical sentiment." The corrective conception is "nature," and the present work considers that conception and its relations to right and law.

His philosophical standpoint is critical idealism. He uses "nature" and "natural" in a deontological sense, citing (p. 169) Ritchie's observation: "Nature . . . . in this sense . . . . means what ought to be, but does not necessarily exist anywhere . . . . If the term (natural rights) were always confessedly used in this sense, no objection could be taken to it."[1] But this "ought" with respect to law, personal as it is in its immediate and particular manifestations, is an approximation toward and an attempt to realize universal demands of human nature. This is illustrated particularly in the tendency toward a cosmopolitan justice and universal law. He says (p. 165):

> The fundamental identity of human nature emerges from the particular laws of nations and necessarily directs their development toward a common goal, namely, toward that universal right whose principles are already predetermined and implicit in human nature; so much that reason deduces them from it *a priori* and holds them valid before they are verified *a posteriori*, expressed and observed in certain contingencies of fact, and independently of such verification.

One is reminded at once of Jitta's theory of obligations in conflict of laws, namely, that there is a *droit commun international*, as a concrete instance in which such verification *a posteriori* may become possible. As there comes to be a universal sentiment of justice, the work of jurists must be to try institutions thereby and to give to this sentiment the requisite formal expression. Rightly understood, the time-honored conception of "nature" has still another life before it to this end. But Anglo-American jurists will doubtless feel, with Ritchie, that the whole matter "might be less ambiguously expressed by a direct use of the term 'ought.'"

[1] Natural Rights, p. 75.

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American legal scholars need to think upon the subject of this work much more than they do, and in radically different fashion. As Professor del Vecchio writes most entertainingly and reviews the literature with fairness and acumen, it is to be wished that some of his writings—perhaps preferably *Il sentimento giuridico*,—might find a translator.

ROSCOE POUND.
NORTHWESTERN UNIVERSITY SCHOOL OF LAW.

Zur Lehre von den Bedürfnissen. By FRANZ ČUHEL. Innsbruck, Wagner'sche Universitäts-Buchhandlung, 1907.—xxiv, 320 pp.

Dr. Čuhel calls his essay an investigation in the boundary region between psychology and economics. He points out, rightly enough, that the concept of want in economics is not clearly defined, and he attempts, in our judgment with but partial success, to give it precision by careful analysis.

The idea of want, declares Dr. Čuhel, instead of being a simple one, is a compound of no less than three coördinate concepts, in addition to which it includes five other subordinate ones. He concerns himself chiefly with the former, taking up in order (1) want for well-being (*Wohlfahrtsbedürfniss*); (2) want for appropriation (*Verwendungsbedürfniss*), and (3) want for disposal (*Verfügungsbedürfniss*). Thus a hungry man wants (1) to cease being hungry, (2) to eat a beefsteak as the condition of ceasing to be hungry and (3) to have control of a beefsteak as the condition of eating it. The first idea is wholly psychological, the second is the foundation of economic life, and the third, of course, leads directly to economic activity. The name "chreonomy" is proposed for the investigation of the relations between these three phases or aspects of want, which investigation constitutes a sort of prolegomenon not only to economics but to other "practical" sciences as well. The book is thus largely an essay in chreonomy, and the second chapter, in which the three concepts are discussed, is one of the most interesting and useful parts of the whole work.

The third chapter contains a convenient review and criticism of the doctrines of want propounded by the chief authorities from Hermann down to Kraus and Pantaleoni, while the fifth is a dreary catalogue of want classifications, no less than twenty-nine of which are considered. The intervening chapter is a painstaking study of collective wants, which the author distinguishes from common individual wants. The former are wants of the society as such, or of the individuals composing it, not as individuals, but as members of the society. Thus the want

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of a state for cannon to defend itself is a collective want. The want of the inhabitants of a city for pure water is in itself a common individual want, but in so far as the well-being of the city as a whole is contingent on its inhabitants having pure water, the want is a truly collective one. Whatever its practical usefulness, the idea is a rather interesting one, and it leads to some interesting criticism of Wagner, Sax and Kleinwächter. Public institutions arise when a collective want is a want for appropriation, public industries when it is a want for disposal—another rather striking suggestion.

The latter half of Dr. Čuhel's work deals with the intensity and commensurability of wants, both present and future, and under all sorts of conditions. It thus traverses the ground which underlies the theory of interest. While it contains several interesting suggestions, as a whole it is distinctly unsatisfactory. For the most part it is a statement of familiar truths in new and barbarous terminology. Of this nature are many of those laws of "chreonomy" which we are frequently assured are of fundamental importance for economics. When not of this sort, the so-called laws too often involve the use of mathematical coëfficients to which by the author's own statement no exact value can possibly be given. We confess our inability to see the advantage of cumbering economic literature with laws and formulas of this character. The test of a good hypothesis is the possibility of its being verified or disproved. An economic "law" in the form of a mathematical equation whose terms cannot be determined may be a delight to its author, but it will not advance the science very far. We could wish that Dr. Čuhel had restrained his inclination to formulate such laws and that he had not so often confused new terminology with new thought.

This part of the book, however, is by no means without value, containing, as it does, several keen criticisms of the Austrian doctrine as ordinarily held, along with several that are mere logomachy. Want is a thing of two dimensions, duration and intensity, insists our author, and to cover this double aspect he proposes the term *Egenz*. The concluding chapters are wholly taken up with the relations between *Verwendungsegenzen* and *Verfügungsegenzen*. Dr. Čuhel ingeniously maintains, in opposition to Böhm-Bawerk, that the comparative *Egenz* of two wants is practically incommensurable. His examination (p. 197) of Böhm-Bawerk's case of the apples and plums, suggests the need for a careful mathematical study of the psychological conditions underlying the marginal theory of value. Dr. Čuhel's own conclusions here are purely negative. He gives a good discussion of the condi-

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tions under which Gossen's first law holds, and flatly denies the second one. He finds the "kernel of truth" in the abstinence theory of interest in the fact that deferring the gratification of a want as a rule increases its intensity. It is a distinct gain for clear thinking to have arrived at the idea of a unit of appropriation, which our author defines as that quantity of a good whose consumption will effectively influence the desire for appropriation. To have such an idea is to avoid the error of thinking always in infinitesimals, an error which recent work shows to be dangerous in economics. Equally useful is the distinction between what may be called unit wants and divisible wants. Some writers speak carelessly of the marginal utility of pianos, for instance, to an individual, forgetting that most men want one piano and no more, and that the marginal concept does not apply at all. It should also be set to the credit of Dr. Čuhel's thinking that throughout his discussion of the intensity and variability of wants he constantly recognizes the changes in *Egenz* that attend changes in individual supply and accompany the process of consumption.

HENRY RAYMOND MUSSEY.

UNIVERSITY OF PENNSYLVANIA.

Accounts; Their Construction and Interpretation. By WILLIAM M. COLE. Boston, Houghton, Mifflin Company, 1908.—345 pp.

Corporate Finance and Accounting. By HARRY C. BENTLEY. New York, The Ronald Press, 1908.—525 pp.

The recognition accorded the subject of accounting by the American Economic Association at its last session at Atlantic City is significant not only of a higher standard attained in what may be called the profession of accounting, but also of the place now assigned to accounting as an aid in the solution of economic problems. The installation of facilities, by our leading colleges and universities, for the thorough training of accountants has placed the stamp of approval upon accounting as a profession. It has taken the preparatory work out of the hands of the commercial rule-of-thumb man and has placed it in the care of scholarly men with scientific breadth of view. From the "drillery" to academic halls is a step of far-reaching importance from the point of view of the profession of accounting as well as from that of the economist who has opened the door. If accounting is the "scientific analysis and record of business transactions" which "attempts to tell about every transaction, everything that can be of service when known," as Professor Cole affirms in his work under review, it should be able to supply the economist with much pertinent data at first hand.

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Not only is this true in the general field of economics but accounting has also much to contribute to the solution of the special problem of corporation control. The first essential to corporate regulation and control is an accurate knowledge of the fundamental features of the business concerned as revealed in its accounts, where the results are indelibly registered. In this respect attention may well be called to the work of Professor Adams in systematizing railway accounting, probably the most important contribution of the Interstate Commerce Commission to the solution of the problem of railway regulation.

The development of the literature on accounting has followed somewhat slowly the development of the functions of the accountant. So long as the function of the keeper of accounts required of him no actual knowledge of the conditions under which business was conducted, his knowledge of the subject was confined largely to mechanical methods and systems. We do not have to retrace our steps more than a decade to find conditions under which the keeper of the accounts of even large concerns did little more than record the simple story of cash received or to be received, and cash paid out or to be paid out. He was therefore a person of minor importance in the business concern. The development of business has changed these conditions. The relative efficiency of processes is examined with keen analysis. It is not enough to know that profits have been made. The business man insists on knowing *how* they have been made. The result of this demand is the development of cost-accounting systems which reveal the relative efficiency of processes and give unquestioned evidence of the particular channels through which either profits or losses accrue. It is hard to believe that even ten years ago there were few, if any, cost-accounting systems worthy of the name.

Under these conditions it is not surprising that up to the present time the literature of accounting has developed little other than what may be termed "short-cuts" and "methods", which reflect only too vividly the dearth of culture and the narrowness of vision, as well as the ignorance of fundamental principles possessed by the authors of such productions. Professor Cole's book on accounting comes, therefore, as the herald of better things. Even a superficial perusal of its pages is sufficient to convince the reader that here at last is an attempt to bring to bear on the subject of accounting the same careful scientific treatment which has produced such satisfactory results wherever applied.

The key note is struck by Professor Cole in his introductory chapter.

> Accounting, in the sense in which it is used here is scientific analysis and record of business transactions. It attempts to tell about every transaction

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everything that can be of service when known. It attempts to show the results of every effort, the cost of every return. Only by its aid can satisfactory comparison be made of different enterprises and different methods. The book is an attempt to set forth in simple form the main principles which must govern any attempt at accounting. . . . . [It] is intended to be comprehensive for principles, but is not meant for an encyclopedia of bookkeeping forms and practice.

No doubt the author will be criticised for the inclusiveness of his definition of accounting by those who would draw the line at the gathering of statistics as a function of accounting proper. From the practical standpoint of the bookkeeper there may be considerable justice in distinguishing between accounting as so restricted, and the gathering of statistical data; but while it may be expedient as a matter of bookkeeping detail to make such a distinction, it does not necessarily follow that the gathering of such statistical data as will throw light upon the conduct of business is not clearly within the field of accounting. The author is wise in laying thus broadly the foundation of this new profession.

It will be sufficient to say of Professor Cole's book that he has admirably succeeded in his "attempt to set forth in simple form the main principles which must govern any attempt at accounting." His style is so simple and direct that one is conscious only of the thought to be conveyed, save for the presence of some quaint but good old orthodox words. The freedom from anything dogmatic in the presentation of illustrative material comes as a refreshing breeze to one who has perused the literature of accounting. If any particular chapters, among so many of value, were to be singled out for special commendation, they would without doubt be those on "Capitalization" and "Factory Accounting." It would be presumptuous, of course, to contend that the final word in accounting has been said, and, judging by his presentation of the subject, the author would be the last to make such a claim. A careful study of the book will, however, convince any one that a distinct advance has been made, and a high standard set.

A far more imposing volume is Mr. Harry C. Bentley's *Corporate Finance and Accounting*, an attempt to set forth in the form of a manual "a clear knowledge of the laws, the principles and the practices which control" in the department "of corporate finance and accounting." An idea of the nature of the task to be accomplished is contained in the words of the author's preface.

For convenience in both treatment and use, the work is divided into six

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parts; the first treating of the treasurer's duties and legal obligations; the second of the corporate books of account; the third of the corporate finances including checks and dividends; the fourth of negotiable instruments; the fifth of corporate securities, and the sixth presenting the forms used by the treasurer in the routine of his official work, together with others relating to the corporate finances and securities.

Of these six parts one only, the second, relates to the subject of accounting. In the introductory remarks to this section of the work it is stated that "the intention of the present discussion is to bring out the general principles which govern modern bookkeeping, and to give such details of the various systems and the methods employed as will illustrate the application of these principles." The use of the term "modern bookkeeping" rather forestalls any criticism of this section from the point of view of accounting, unless it be that the author is scarcely justified in his use of the term "accounting" on the title page. "Modern bookkeeping" is certainly not synonymous with accounting, and, in the interests of the profession of accounting, should not be allowed to masquerade under such a garb. A careful reading of this section (which, by the way, seems to be the author's only contribution to the book) gives evidence of a failure to rise above "methods" and "systems" despite the author's expressed aim to "bring out (the) general principles." There is a strong tendency to assume, even in bookkeeping terms, that there is but one system, that it is scientific and the author's; and although the section is abounding in valuable suggestions the reader is often irritated by the assumption of finality even in matters of detail, as in the statement on page 150 that "a cost system for a manufacturing establishment should enable the management to ascertain at the close of each month," an elaborate detail of information. As a matter of fact, in many of our larger industries a monthly statement is impracticable and even unnecessary, an annual statement answering every purpose. All of which illustrates a failure, in the presentation of the subject, to distinguish properly between principles and their application by "methods" to specific cases.

The main feature of the book under consideration, however, is that devoted to the legal aspect of corporate activities from the standpoint of corporation officials, more especially of the treasurer. This portion of the book is contributed by Mr. Thomas Conyngton, a well-known member of the New York Bar. The scope of the work and its treatment, the clear, concise and non-technical language used should certainly contribute to his reputation as a writer on corporation affairs,

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and should justify the placing of his name in a more prominent position on the title-page.

Typographically the book is beyond criticism. The orderly arrangement of the text into numbered paragraphs, appropriately headed in noticeable type, and the corresponding table of contents, together with an admirable index, make it a manual easy of access and worthy of a prominent place on every business man's desk.

BEN. F. WRIGHT.

WASHINGTON, D. C.

The Stannaries. By GEORGE R. LEWIS. (Harvard Economic Studies, Vol. III.) Boston and New York; Houghton, Mifflin and Company, 1908.—288 pp.

This volume embodies a well-conceived and admirably executed piece of research. The stannaries offered an almost unique opportunity to the economic historian who was capable of combining an intensive study of the abundant documentary evidence with a sufficient grasp of the wider connections of his subject. He must be prepared to illustrate the ample records of tin mining by reference to the history not only of the other branches of British mining but also of the more important mining districts of continental Europe. He must not confine himself to purely economic data, but must handle in turn the half-dozen closely connected yet essentially distinct aspects of his subject, technical, industrial, commercial, juristic, fiscal, constitutional. Mr. Lewis has met these arduous conditions with conspicuous success; his book will not only long continue to be the main authority on the stannaries, but will afford valuable stimulus and suggestion to workers in other branches of economic history.

A statistical record of remarkable length and continuity supplies the backbone of the investigation. The record of the annual production begins in the 12th century and that of coinage dues and other forms of taxation in the 13th century, and though none of these records is regularly preserved till the latter half of the 15th century there is sufficient material to justify generalization as to the productivity of the earlier period. At the end of the reign of John, who was the first to pay special attention to the fiscal possibilities of the stannaries, there is a recorded production of 1198 thousandweights, an amount which is equal to the average production of the first half of the 17th century. In 1337 the figure is 1380 thousandweights; in 1400 it is 1593; in 1547 it is 1731; but these are the highest points in a very fluctuating output.

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Broadly considered, the figures point to two main periods of productivity corresponding to a fundamental difference in the methods of extraction. Down to the middle of the 15th century the greater part of the tin was obtained from stream works, *i. e.*, from alluvial deposits on or near the surface. It was only as these became exhausted that resort was had to the original lodes by means of shaft-mining. The same two periods are clearly marked in the history of German mining, and with the technical development thus implied there is necessarily involved a parallel development of economic organization. The recent labors of German scholars have cast much light on the evolution of miners' associations and of the miner's contract. Mr. Lewis has done good service in making the main results of these researches readily accessible to American and English students, and the use he has himself made of them in elucidating the history of Cornish mining is an excellent example of the fruitfulness of the comparative method. The analogies and the divergences thus brought out are alike instructive. The Cornish miner seems always to have been more of an individualist than the German, both as regards his relation to the State and his relation to his fellows. In part this has been due to the special conditions of silver mining, which demanded even in early times a higher degree of coöperation than tin mining and which has been increasingly subject to government control. The early German *Genossenschaft* of sixteen free miners, each possessing an equal share in a mine and furnishing his own capital, presents a close analogy to the guild of small master craftsmen and to the hypothetical village community; and just as in its later developments the guild was gradually permeated and finally dominated by the capitalist-trading interest, so the mining company, by the introduction of non-working members who contributed to the "cost," was transformed into a body of capitalist shareholders, whilst the free miner fell from his early position of independence into a status resembling that of a small master under the "domestic system" and later into the condition of a wage-earner with a separately organized labor interest.

There is no record of formal *Genossenschaften* in the earliest period of Cornish mining, but the early existence of groups of partners is proved by the subsequent devices for the introduction and regulation of outside capital, and later still of outside labor. These devices, the "cost agreement" and the "tribute system," used indeed to be considered as indigenous to Cornwall, and previous students had traced them back into the 18th century, but Mr. Lewis shows, not only that they were in full operation in Cornwall in the 16th century, but that they were common features of German mining in the middle ages.

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What is distinctive of Cornish mining is the late survival of these methods of industrial organization. The "cost-book" system aroused much interest among lawyers in the middle of the last century as an early example of limited liability without incorporation, and the tribute system has attracted the attention of economists as a successful instance of labor coöperation which has obviated the necessity of trade-unionism. Mr. Lewis's researches sets these interesting survivals in their right historical perspective.

Another important aspect of the subject is that of the Tudor and Stuart monopolies in tin. These were based on the right of preëmption already exercised in the 14th century, but claimed a further justification in the need of protecting the tinner from the oppression of the capitalist who made him advances. Sir Walter Raleigh defended his tin monopoly in Parliament on the ground that it had raised the tinners' wage from 2s to 4s a week. This connection of monopoly with measures taken in the supposed interest of the small master workman was a universal feature of the industrial regulation of the period. Recent study of the monopolies has shown that the Crown did not profit by this arrangement, and Mr. Lewis's facts seem clearly to indicate that the tinner did not benefit by them. The price obtained for the tin by the monopolists continued to rise, whilst the price paid by them to the workers remained stationary. A policy of *laissez-faire* adopted by the Commonwealth brought abounding prosperity to the tin mines which subsided when the old system was reïmposed at the Restoration.

Apart from a careful account of the technical development of tin mining, quite half of Mr. Lewis's work is concerned with the non-economic aspects of his subject. He has devoted much learning to the discussion of the vexed questions of regalian rights and of the origin of the customary law which prevails in the Mendips, in the forest of Dean, in Derbyshire and in Cumberland. In his chapter on "Administration and Justice" he has given as full an account as the records permit of those Stannary courts which, with their later development into a parliament of tinners, represent a unique survival from the days when industry and trade were first set free from a feudal environment by the device of a collective immunity. The student of early guild history cannot fail to find in this book an abundance of suggestion and analogy.

GEORGE UNWIN.

UNIVERSITY OF EDINBURGH.

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American Charities. BY AMOS G. WARNER. Revised by Mary Roberts Coolidge. New York, Thomas Y. Crowell and Company, 1908.—xxii, 510 pp.

Assuming that a revised edition was needed of a book that had been for fourteen years and is still remarkably fresh and satisfying in spite of the rapid development of the subject it treats, no one could have been found to approach the task more sympathetically or more intelligently than the present reviser, who was the pupil, friend and colleague of the author.

It was no small undertaking to work through the literature of the subject which has accumulated since 1894, embodied as it is largely in reports and periodicals. There is plentiful evidence that this has been done on the whole thoroughly and with discrimination, though the references given in the bibliography on the subject of tuberculosis suggest that in this field, at any rate, much of the literature was not available for consultation. It is especially noticeable that the *Handbook* published by the New York Charity Organization Society is omitted, although its directory of institutions and societies dealing with tuberculosis, a book of much less permanent value, is included.

Inaccuracies are encountered in the most cursory examination of the book. The first charity organization society in the United States is said (p. 437), to have been in Boston, though later a correct statement is made. Muensterberg's "Impressions of American Charity" is attributed to the *Charities Review* instead of to *Charities*. On page 50, in a single sentence and a foot-note to it, two distinct articles are referred to as one, the Philadelphia (1906) Conference of Charities and Correction is dated 1907, and the *Quarterly Journal of Economics* is substituted for the *Political Science Quarterly*.

It must have been extremely difficult to decide what changes were required in Dr. Warner's text to bring it "down to date." How successfully this has been done is a matter for individual judgment, and those who prefer Warner unrevised can go on using their familiar copies and recommending the first edition to their friends until it is exhausted. With the exception of the fifth chapter, which is wholly "interpolated by the Reviser" the modifications and additions, unless marked by dates, are not discernible to the eye. To disentangle the original Warner from the revised edition it is necessary to compare the two books, not only page by page, but even word by word.

On the whole the impression given by the book is that Warner's *American Charities* has been worked over in the light of the discussion

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and development that has got into print since it was written, but that somehow the life and vigor is lacking which is felt in the original text and which is felt also in Mrs. Coolidge's *Almshouse Women*, and which comes, in both these instances and generally, from intimate and wide association with the work itself.

LILIAN BRANDT.

NEW YORK CITY.

Sixty Years of Protection in Canada (1846–1907). By EDWARD PORRITT. London, Macmillan and Company, 1908.—xii, 478 pp.

Although this volume is frankly polemical its author is not a politician. His presentation of the thesis that "protection to home industries is today more firmly entrenched in Canada than in any other country in the Anglo-Saxon world," is not merely a full and vigorous statement of his position, but it contains a great mass of well arranged and well digested statements of fact. Mr. Porritt dwells with emphasis upon the circumstance that, prior to their assumption of office, the liberal leaders unsparingly denounced the protectionist policy of their predecessors and attributed to that policy the prevalence of corruption and other evils. In spite of this, protection to industry has not been mitigated by the liberal government since it assumed office in 1896, excepting so far as the preferential tariff upon British goods is concerned. Protection has indeed been increased by means of bounties, "bonuses, free sites, loans, tax exemptions" *etc.*, which have been granted to industries not merely by the Dominion Government but also by the provincial governments and by the municipalities. The industries which have chiefly benefited by this encouragement are the iron, steel, lead and petroleum industries. The aggregate aid given in bounties alone by the Dominion Government in the fiscal year 1905–06, was upwards of $3,000,000. In addition to this direct aid, the Railway Acts since 1900 provide that when a railway is subsidized by the Dominion Government all its steel rails, bridge material and rolling stock must be made in Canada. The outcome of the whole, in Mr. Porritt's view, is that the individual burden of protection is greater in Canada than it is in the United States; because, although the tariff in the latter country is higher, "there is more free trade within the United States than there is in Canada"; industries are more evenly distributed in a geographical sense and thus the cost of transportation of goods from the producer to the consumer is less burdensome; there is moreover more competition between manufacturers in the United

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States than there is in Canada. Mr. Porritt says also that the "trust" is much more potent in Canada than it is in the United States.

Valuable and interesting as Mr. Porritt's book is, it can hardly be said that he proves his case completely. It is quite true that the liberal leaders have not adhered to some of their ante-election pledges. Few leaders ever do. Power is an important fact; and it is not to be sacrificed merely for the purpose of avoiding criticism of that kind. But there can be no doubt whatever that prior to the election of 1896, the liberal leaders gave the manufacturing interests explicitly to understand that, if they were returned to power, there would be no changes in the tariff of such a nature as to affect disadvantageously the Canadian manufacturing interests. This ante-election pledge at least has been fully adhered to. Upon it the liberal party was returned to power, so that whatever may be said of the utterances of the leaders otherwise and previously, they have undoubtedly kept their word as regards the tariff. The question of bounties is easily explained. The farming interests of the West were hostile to a high tariff. The expediency of encouraging industry by direct subvention, gilded with the provision that it was merely temporary, was quite as convenient to the iron industry as, and even more profitable than, a highly protective duty. The bounty was to be paid upon the product irrespective of its destination, so that the iron manufacturers did not require to wait for their profits until the local market should be developed, but could at once manufacture for export, selling for what the iron would fetch and recouping themselves out of the bounty. Although the government did not anticipate this use of the bounty system, they were powerless to prevent it, and when the iron interests came to Parliament for extension of the period during which the bounties were payable, the government had to yield.

Mr. Porritt's sketch of the rise of the national policy is extremely interesting and valuable. He has followed it through the available sources with great industry. The national policy really began before the confederation of the provinces into the Dominion of Canada. According to Mr. Porritt the first public meeting at which protection was advocated was held at Hamilton in November, 1847. The speaker was Mr. R. B. (afterwards Mr. Justice) Sullivan, who put the case for protection, as it was understood at that time, very forcibly: "We walk on carpets and sleep under blankets made in distant England, while our farmers sell their wool to American peddlers to pay a heavy duty on being reïmported here, manufactured into cloths and satinette." Mr. Sullivan also called upon the English manufacturers to go to Canada

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and manufacture there. It cannot be said that this invitation has been accepted to any material extent. Englishmen have emigrated and large amounts of English money have been sent to Canada, but comparatively few English manufacturers have established branch manufacturing enterprises up to the present time. Yet Canadian industry has grown with the enlargement of the market due to an increasing population. From the date of the delivery of Sullivan's lecture until confederation in 1867, manufacturing industry was practically confined to Ontario and to certain portions of Quebec. These provinces advocated a protectionist tariff, but the others found it to be in their interest to have a low tariff "for revenue only."

It was not indeed until 1879 that the Dominion decisively embarked upon its present policy. Mr. Porritt follows the controversy in which the Canadian government at an earlier period engaged with the Colonial office, and he shows how with reluctance the Home authorities acquiesced in the adoption of protection in 1859 by the Province of Canada. It is not a little remarkable that at the very epoch when Great Britain was consummating the policy of free trade by the removal of the last of the protective duties, her dependencies should be embarking upon a policy of a precisely opposite character. The Sheffield memorialists of July, 1859, complained to the Colonial Secretary of that date (the Duke of Newcastle) that

> It cannot be regarded as less than indecent and a reproach that while for fifteen years the government, the greatest statesmen and the press of this country [Great Britain], have not only been advocating but practicing the principle of free trade, the government of one of Great Britain's most important colonies should have been advocating monopoly and protection.

Undoubtedly to the public mind in England at the time the adoption of protection by Canada seemed an inexplicable blunder. It appeared to the people of Great Britain also as though an important advantage were being given to manufacturers in the United States, for the British manufacturers suffered from the natural disadvantage of distance, and they held that the imposition of high duties emphasized this disadvantage.

It is doubtful, however, if this argument was tenable even at that time. If the price to the consumer was raised by the amount of the duty, the cost of transportation would bear a smaller proportion of the total price than it did before the duty was increased. If the price was not raised by the amount of the duty, the differential advantage enjoyed by the manufacturer in the United States in respect to lower

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transportation costs due to proximity would remain unaltered. Another argument which is not now regarded as of importance, *viz.*, that the extensive frontier of Canada and the United States would promote wholesale smuggling, induced by the high duties, was advanced by the Duke of Newcastle in his reply to the Sheffield memorial. It is to be noticed, however, that the Duke in his despatch to the Canadian government expresses his belief that the interests of the consumers in Canada had been insufficiently considered. This drew a sharp retort from the Canadian ministers to the effect that they knew their own business best, and that they had a perfect right as a self-governing colony to arrange their taxation as they pleased. The protest, mild as it was, of the home government against the adoption of a protectionist policy by Canada thus came to nothing, and the home government has made no subsequent attempt to influence Canadian tariff policy.

Mr. Porritt shows that the policy of establishing a preference in favor of Great Britain had been suggested as early as 1876, that it was again suggested in 1888, and that it was made the subject of an intended motion (which, however, was not put) by Mr. Dalton McCarthy in 1889. This preference was ultimately established in 1897. Mr. Porritt's account of the effects of the preferential duties is not so full as might be desired. A competent analysis of the effects so far as they can be ascertained would be very valuable. His description of the proceedings of the Tariff Commission of 1905 and 1906 is on the other hand very full and instructive. Mr. Porritt followed the commission from place to place, and observed all the influences which were brought to bear upon it. Mr. Porritt notices that the "infant industries" plea was conspicuous by its absence; that the cotton manufacturers asked for a higher protection than was afforded by a 35 per-cent duty against cottons from New England, and objected to the "dumping" of Manchester cottons in Canada at the end of the season, and that, while the farmers approved of the British preference, the manufacturers in general desired an increase of the duties upon goods imported from England.

Mr. Porritt narrates that at thirty-one sittings of the Commission, only three Canadians commended Mr. Chamberlain's policy. It should be remarked, however, that the manufacturers and others who appeared before the Tariff Commission, came to state the case from the point of view of their particular interest and to give information upon the effect of duties upon their specific industry. Very few came to discuss general questions.

It may be added that nowhere is any mention made of the popularity

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of reciprocity with the United States. This is a very different state of affairs from that described in a speech of Sir John A. Macdonald, quoted by Mr. Porritt, in which he speaks of reciprocity as being the one thing in the minds of the people of Canada. This was in 1878, and much development has taken place in both countries during the thirty years which have elapsed since then. Conditions have gravely altered and there can be no doubt that at the present time there is no desire for reciprocity in the minds of any considerable number of people in Canada. It is very generally thought that the time has gone by when such an arrangement could be of any serious advantage. In his concluding chapter Mr. Porritt endeavors to explain why it is that the farmers, who he says are in general opposed to the National Policy, are unable to influence the political situation in such a way as to secure the modification of the tariff. He points out that the Conservative opposition being even more strongly committed to protection than the Liberal Government, no help is to be obtained from them, and that the followers of the Liberal Government are prevented from "bolting" by the knowledge that they would be deprived of the sinews of war in elections.

JAMES MAVOR.

UNIVERSITY OF TORONTO.

National and Social Problems. By FREDERIC HARRISON. New York, The Macmillan Company, 1908.—xxxi, 450 pp.

Christianity and the Social Crisis. By WALTER RAUSCHENBUSCH. New York, The Macmillan Company, 1907.—xv, 429 pp.

The Limit of Wealth. By ALFRED L. HUTCHINSON. New York, The Macmillan Company, 1907.—xiii, 285 pp.

In a recent speech in New York City President Eliot said: "There is an intense interest all over the country at the present time in two great problems: first in making righteous our industrial activities, and second in making righteous our municipal governments.

The three books under review deal with "making righteous" our industrial life, and to a less extent with righteousness in politics. They are written by men deeply in earnest in their desire to help the world, men with a message to give to mankind, but approaching their great problem from entirely different standpoints. Mr. Frederic Harrison, practical statesman and advocate of trade-unionism, with Humanity for his religion, writes:

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This book is an appeal to international morality, and a plea for social regeneration. I wholly and ardently agree with the socialist that the earth will not be a home worthy of civilized man until there has been a root and branch social revolution to reform the daily lot of the vast working majority of our fellow citizens. But when we pass to their reconstructive schemes I can see little but sophisms and passionate dogmatism in the random crudities which pass as socialism. If socialism means the abolition of personal appropriation of capital by force of law then I look on such a dream as the era of social chaos and moral and material ruin.

Nor does he see any power in the Christian church to work out our social and industrial rebirth to righteousness, for:

theology, absorbed in matters of worship and hopes of heaven, has no call to meddle with earthly politics, to offer council to secular rulers, or to propound any scheme for reorganizing society. Its kingdom is not of this world, and it seldom intrudes on worldly affairs without adding to the conflicts and the perplexities it finds.

Very different ideas are found in the writings of Dr. Walter Rauschenbusch, professor of church history, and "pastor for eleven years among the working people on the west side of New York City." The historic chapters, dealing with the religious development of the prophets of Israel, and the ideas dominant in primitive Christianity, are illuminating and interesting, but his discussion of modern industrial and socialistic tendencies is not always convincing. He believes that we have reached a great crisis in the history of humanity. Christian civilization is being weighed in the balance. Will it be found wanting? "Will some Gibbon of Mongul race sit on the shore of the Pacific in the year A. D. 3000, and write on The Decline and Fall of the Christian Empire?"

We are at "the turning of the ways," he declares. The industrial revolution, individualistic philosophy and the deification of the principle of self-interest in business have dug an ever-widening gulf between the proletariat many and the wealthy few. Under stress of competition the Christian business man is forced into the tragic position of having to try to serve both God and Mammon. The Church must christianize business, or business will commercialize the Church, and selfishness will rule the world for a season. This is the Church's mission. Rightly interpreted it has always been so. The heart of the religious teachings of the Hebrew prophets and of Christ's religion is the social regeneration of men, here and now. The true spirit of Christianity—the spirit of brotherhood and mutual aid—is abroad in the world as never before. The masses of the workers and the idealists feel it and are struggling towards it, fiercely, ignorantly, half blindly.

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The great trade union and socialist movements attest this. Religious work is more and more taking the form of social uplift. The Church has grown more charitable, less dogmatic, more democratic. It is attaining to moral and intellectual maturity. Science and religion are becoming friends, and today the Church is fitter for its mission than ever before, for in the past a scientific comprehension of social life was totally lacking. But the idealists alone cannot accomplish the reconstruction of social life. It needs the firm support of a strong and solid class whose economic future is staked on the success of this ideal-brotherhood and coöperation. The industrial working class is, consciously or unconsciously, committed to this struggle.

If the Church truly desires the victory of its social ideals, it must be content with inspiring the social movement with religious faith and daring, and must not attempt to control and monopolize it for its own ends, "to make itself the chief agent and beneficiary of the process."

Mr. Rauschenbusch awakens in his readers a most beautiful and inspiring hope, and thinks that "socialism is the ultimate and logical outcome of the labor movement." But there are many who will agree with Mr. Harrison in seeing in socialist collectivism not the ultimate and beatific state of man, but only "social chaos—moral and material ruin." Social well-being and civilization itself depend upon a large accumulation of capital, but,

> under the Socialist scheme, all accumulation would be dependent on the votes of those who have no turn for accumulation at all, who, under the pressure of daily needs could not be induced to provide for the future, who have no training in business, and who would be open to all the motives which are wont to play upon popular impatience.

Collectivism does not seem to be the way out of our difficulties. There are many who think that the great social reformation will come through trade-unionism, not socialism, through negotiations between employers and employees rather than by the absorption of both into a single class. But Mr. Harrison believes that trade-unionism helps and can help only the fortunate minority of working men. The successes of coöperative production, from which so much was hoped, have been very few and unimportant, and he foretold that this would be so as early as 1865.

What then can be done? For, as Mr. Harrison tells us:

> a settled conviction has grown up in the conscience of various men of all schools, that society in its present form presses with terrible severity on the

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whole body of those who toil in the lowest ranks of labor. And from Bismarck and the Pope downwards all who bear rule, and all who teach, are coming to feel that society is in a very rotten state whilst that continues. We are all waking up to see that it will not do, and must be mended or ended.

It is a most interesting fact that these two authors (Harrison and Rauschenbusch), so far apart in most things, are agreed that the regeneration of our corrupt industrial system can be accomplished only by religion—a social religion—which, writes Mr. Harrison, viewed from the other side, is a "religious socialism." We must look for the rise of a new morality, supported by the mighty force of public opinion, by law, and by

a set of social institutions which will impress upon the conscience the paramount sense of duty from the cradle to the grave. The deeper source of the suffering, cruelty and oppression about us lies in human selfishness—selfishness, which is subtle as the serpent that beguiled our first parents, and which is able to elude a thousand laws. How are we going to cure or mend human selfishness? Our answer is plain. Only by Religion—by a social religion, the aim of which is not to land the believer in Heaven, but to reform human nature upon earth. . . .

Mr. Hutchinson, in *The Limit of Wealth*, leaves the trying battle ground of today, and from the vantage point of 1942 shows us how the great social and industrial reformation was accomplished in the United States, mainly by the distribution of large fortunes, and the wise development of our national resources with the capital thus obtained. It is not a socialist scheme, for competition is regarded as most beneficent, and is encouraged in most fields, even the post-office being run as a private business, with large profits. Men of great ability may accumulate enormous fortunes, and use them while they live, but they are regarded as trustees for the public, gifts are strictly limited in amount, and at death not more than one million dollars can be disposed of by will. Insurance, banking and the coal business are nationalized, land ownership is restricted to eighty acres per individual and speculation on margin is prohibited. Aside from the distribution of large fortunes, the central idea of the book is the creation of wealth by stimulating all private industries and fostering competition, even in railroads, express, telegraph and telephone businesses.

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International Law and Diplomacy of the Spanish-American War. By ELBERT J. BENTON. Baltimore, Johns Hopkins Press, 1908.—300 pp.

This volume contains the Albert Shaw lectures on diplomatic history given at Johns Hopkins University during 1907. The author says of his work:

> A serious effort has been made to present the subject dispassionately, but the point of view throughout is American; the greater part of the sources have [sic] an American origin, and the aim has been to exhibit the foreign policy and practice of the United States during this period, both as a neutral [during the insurrection of Cuba] and as a belligerent.

The material is well organized and clearly and compactly presented. The author's judgments are generally fair and impartial; indeed his only castigation is reserved for our press, which he characterizes as: (p. 32) the "unscrupulous journals"; "the fury of the newspaper correspondents"; (p. 64) the "inflammatory reports"; (p. 76) the "unscrupulous journals"; (p. 87) "a rabid press"; "scare headlines"; (p. 122) "the yellow journals"; (p. 214) "American newspapers complained loudly"; "the furore raised by the American journals"; (p. 217) the "mere hint of which quickly superexcited American journalistic passions"; the "sensational press"; (p. 220) "an injudicious journalism". Unfortunately for the newspapers Mr. Benton's characterizations seem just. Probably the most serious enemy to-day to the peace of nations is an ignorant and blatant press pandering to the baser passions of men.

The grievances of Cuba are considered by Mr. Benton to have been economic rather than political, though he admits that the many reform acts granted by Spain had been perverted by colonial politicians. He believes that the president yielded prematurely to an impatient Congress and a strong popular demand for war and that "diplomacy might within all human probability have accomplished the emancipation of Cuba. . . . Congress forced the United States into war . . . in the face of the full concessions of Spain."

Mr. Benton points out that the hostilities of the Spanish-American War were largely naval. It is hardly accurate to say that the period of immunity allowed to enemy commerce "represented a distinct advance over former practice", and it seems far-fetched to say that the action taken "indicates the slight extension necessary to bring about the total immunity of private property on high seas", likewise that "all

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Europe save England is committed to the immunity of private property". The author points out that the Spanish arrangements for an auxiliary naval force were objectionable as involving certain features of privateering. He says that the protest of Spain against the ruse of employing a false flag, occasioned by the conduct of the "St. Louis", turned the tables upon the United States and put "the former complainant" against Spanish cruelty "before the court of neutrals on the charge of inhumanity".

For some three years after the treaty of peace the government of Cuba was conducted by the United States and at the same time its territory and people were treated as "foreign". Students have experienced some difficulty in locating and otherwise describing the "sovereignty" which they feel must have existed somewhere during this period. Magoon considered the sovereignty of Cuba as "dormant"; Mr. Benton says that this is "incorrect", because "sovereignty is not a matter *de jure* but *de facto*". He says that the military government maintained by the United States constituted an "agency for the exercise" of the sovereignty which he considers had "passed automatically to Cuba with the departure of Spain's representatives." It would seem that if sovereignty is purely a matter *de facto* the author ought to disregard the *de jure* forms (which the United States may have chosen to employ during these three years) and ought to locate the ultimate and supreme political power, as an actual fact, where it existed during this period. Admitting that sovereignty is a question of fact and that it "cannot be destroyed or put to sleep", it would seem that it passed in the present case from Spain to the United States.

Regarding the attitude of the United States toward the franchises granted by Spain to railway, telegraph, cable, banking, water-power and other companies, the author very properly deprecates the unnecessarily narrow legal view with which their claims were determined. Though it is undoubtedly true that there was no existing national law of an express character that was applicable to the solution of the questions presented in these cases, it would seem that, if international law is a part of our common law, there were principles in this field which could have been brought forward and applied to meet the demands of civilized justice. Mr. Benton has omitted to furnish a table of the cases and authorities he discusses and cites.

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RECORD OF POLITICAL EVENTS

[From November 3, 1908, to May 1, 1909.]

I. INTERNATIONAL RELATIONS

THE BALKAN SITUATION.—Negotiations among the powers have served to maintain peace and practically to sanction the violations of the treaty of Berlin which were reported in the last RECORD (pp. 746, 747). The Turkish program for the proposed **conference**, published in December, comprised the determination of the juridical status of Eastern Roumelia, Bosnia and Herzegovina, the financial indemnity to be paid by Bulgaria, the compensation due to Servia and Montenegro, the abrogation of articles 23 and 61 of the Berlin treaty, the modifications of the capitulations and Montenegro's demand for a change of article 29 of the Berlin treaty.—Austria-Hungary and the Porte signed a protocol late in February, whereby Turkey recognized the annexation of **Bosnia** and Herzegovina and Austria-Hungary undertook to assure religious liberty to the Mohammedan Bosniaks, to pay Turkey twelve and a half million dollars, to consent to an increase of the Turkish tariff from eleven to fifteen per cent., to Turkish monopolies in cigarettes and matches and to the abolition of Austro-Hungarian post-offices in Ottoman territory.—The Turkish government declared in November its willingness to recognize the independence of **Bulgaria** on condition that nine millions of the Turkish debt should be transferred to Bulgaria as compensation for the Eastern Roumelian tribute. A hitch in the negotiations in January led to fresh military preparations on the part of Bulgaria, but Russian mediation preserved peace. It was reported in April that Russia would assume responsibility for the increased Bulgarian debt.—The most serious aspect of the Balkan situation was the intense feeling in **Servia** and **Montenegro** against Austria-Hungary. In November, a military convention was signed between the two Slavic states, and the crown prince of Servia and the president of the Montenegrin upper chamber undertook a special mission to Russia, where they were enthusiastically received. The crown prince on his return to Belgrade made several warlike speeches, and Austro-Hungarian troops were massed on the frontier. Late in March, Russia, apparently under great German pressure, recognized the annexation of Bosnia and Herzegovina and joined the other powers in prevailing upon Servia to disarm and leave final settlement to the powers without demanding compensation.—Austria-Hungary protested in December against the demand of Montenegro for the cession of Spizza (Dalmatia), and the Montenegrins organized a boycott against Austria-Hungary. A slight readjustment of the frontier between Montenegro and Turkey was mutually agreed upon in December.—Negotiations

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concerning the disposition of **Crete** were opened in November between the Porte and the four protecting powers.

GENERAL EUROPEAN RELATIONS.—It seemed to be the consensus of opinion in the European press that **Germany** had played a prominent part in the Balkan negotiations with a view to breaking the friendly relations between Russia, France and Great Britain, but had rather tended to strengthen them.—Despite the visit of King Edward to Germany in February and the most pacific official expressions, the increasing activity in German naval construction aroused considerable uneasiness and ill-will in **Great Britain.** The governments of Great Britain and Germany agreed in December to the appointment of a joint commission to delimit the boundaries of their territories in New Guinea, and on February 17, King Alphonso of Spain accepted the Anglo-German proposal that he should arbitrate the Walfisch Bay dispute.—A new commercial treaty was concluded in December between **France** and **Sweden.**

AFRICAN AND ASIATIC RELATIONS.—Mulai Hafid, in accordance with the Franco-Spanish note, guaranteed on December 5 all the provisions of the act of Algeciras, and was immediately recognized by the powers as sultan of **Morocco.** The clash which occurred at Casablanca late in September between French officials and representatives of the German consulate (see last RECORD, pp. 748, 749) was submitted in December, after mutual expressions of regret, to the arbitration of a commission of five, a German and an Italian being selected by the German government, a Frenchman and an Englishman by the French government, and a Swede by joint agreement. Representatives of France and Germany signed at Berlin on February 9 a definite convention concerning the status and action of their respective countries in Morocco. France announced her intention to maintain "the integrity of the Shereefian Empire" and "the German imperial government, having only economic interests in Morocco, recognized on its part that the particular political interests of France are there closely bound up with the consolidation of internal order and peace and resolved not to impede those interests," and both governments guaranteed equal commercial privileges. Mulai Hafid stated that he considered the Franco-German convention superfluous as it was already decided that the advice of France should be accepted on all questions of policy. Trade returns published at Paris in March for the Moroccan treaty ports showed the relative trade with the principal foreign countries for the year 1908 as follows: France, nine million dollars; Great Britain, eight millions; Germany, two and a quarter millions; Spain, one million.—Negotiations were opened in December for the settlement of all outstanding disputes between **China** and **Japan.** These include differences regarding Manchuria, railway construction and, most difficult of all, the determination of the status of the territory of Chien-tao. Japan claimed that the province, though long occupied by China, was really Korean territory illegally taken by China, and that Japan should in any event exercise jurisdiction over the

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Korean inhabitants who outnumber the Chinese five to one. The Chinese government insisted, on the other hand, that the Koreans were permitted to settle in Chien-tao only on condition of surrendering their Korean citizenship. China requested late in March that the disputes should be submitted for arbitration to the Hague tribunal, but Japan declined on the ground that the resources of diplomacy had not as yet been exhausted.—An agreement was effected in March between **Great Britain** and **Siam**, whereby British subjects who had registered in Siam before that time would remain under the jurisdiction of the international courts and those registered subsequently would fall under the jurisdiction of the native courts. British residents in Siam were also to be subject to the ordinary taxation of the country.—Russia and Great Britain have been working in harmony to maintain peace and quiet in **Persia** and to induce the shah to restore the operation of the constitution (see *infra*, p. 376).

INTERNATIONAL CONFERENCES.—A conference of ten **maritime powers**, called by Great Britain to frame a code of laws for naval warfare and for the formation of the international prize court recommended by the Hague Conference, was held at the British Foreign Office in London from December 4 to February 26. The achievements of the conference, embodied in a code of sixty-nine articles, considerably modified the Declaration of Paris as to what should be considered contraband of war, under what conditions a neutral vessel carrying contraband might be sunk, and the question of compensation therefor. No agreement was reached on the conversion of merchant vessels into ships of war by belligerents or on the constitution of a permanent prize court.—An international **opium conference** was held at Shanghai in February. Reports showed that the area under poppy cultivation was greatly reduced and that the consumption had diminished by half in five years. Resolutions were adopted urging government monopoly in China, Japan, India and French Indo-China.—The **Pan-American Scientific** Congress convened at Santiago, Chile, on December 25.

FOREIGN RELATIONS OF THE UNITED STATES.—After an extended official correspondence between the United States and **Japan** concerning an understanding with regard to the policies of the two nations in the Orient, Ambassador Takahira and Secretary Root by an exchange of formal notes on November 30 announced their agreement on the following principles: the two countries wish to develop their commerce on the Pacific Ocean freely and peacefully; they have no aggressive intentions but wish to maintain the *status quo* in the above region and the open door in China; they are firmly resolved to respect each other's territories; they are determined to preserve the independence and integrity of China and the principle of equal opportunity for all countries to carry on trade and commerce there; and in case of any event disturbing the above principles the two governments will confer on the most useful measures to be taken.—The long-standing difficulties between **Venezuela** and the United States

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(see last RECORD, p. 750) have at last been adjusted, principally through the efforts of W. I. Buchanan who was sent as special commissioner from Washington to make terms with the Venezuelan government. After more than a month's negotiations a protocol was signed on February 13 providing that three claims should go to the Hague tribunal for arbitration and a fourth should be settled by a small cash payment. At the same time, through the agency of Mr. Buchanan, a settlement was reached between the New York and Bermudez Asphalt Company and the Venezuelan government by which the former was to pay a cash indemnity and an annual revenue.—In November, the government of **China** sent Dr. Tang Shao Yi as a special ambassador to Washington to thank the government of the United States for its generosity in remitting a portion of the Boxer indemnity (see RECORD for June, 1908, p. 351). It was persistently rumored in the Washington papers that Dr. Tang was also instructed to negotiate a more or less formal alliance with the United States but was unsuccessful.—On January 11 Secretary Root and Ambassador Bryce signed a "Waterways treaty" designed to settle the differences which have long existed between the United States and **Canada** over many complex problems that have arisen in connection with the water boundaries between the two countries. In April it was announced that representatives of the two governments had been appointed to survey again the entire boundary line. In January Secretary Root and Ambassador Bryce also came to an agreement on the issues relative to the fisheries question (see last RECORD, p. 749) to be submitted to the arbitration of the Hague tribunal.—Negotiations between the United States, **Colombia** and **Panama** were concluded early in January by the signing of a treaty securing the independence and adjusting the boundaries of Panama and providing for the payment of $2,500,000 to Colombia to be assumed by the United States in consideration of concessions for the building of the Isthmian canal. The treaty was violently attacked in the United States Senate when it came up for ratification in February.—In December, **Germany** and the United States arranged for a postal rate of two cents an ounce on letters routed directly between the two countries, to go into effect on January 1, 1909. On February 23 the two governments also agreed on a treaty protecting patent rights of citizens of the respective countries. This treaty was ratified by the Senate on April 15.—The Department of State was notified on January 6 of the signature of a new extradition treaty with **France**.—As a condition of the recognition of the transfer of the sovereignty of the **Congo Free State** to Belgium, Secretary Root, on January 11, demanded from the Belgian government specific assurance of certain reforms on behalf of the natives and the guarantee of freedom of trade between the United States and Congo as provided in the treaty of 1891.—The Senate ratified on January 13 **arbitration treaties** with Bolivia, Ecuador, Uruguay and Haiti.—The presidential elections in **Cuba** held on November 14 (see last RECORD, p. 750) resulted in a large majority for General José Miguel Gomez, the Liberal candidate.

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On January 28 President Gomez was escorted to the palace and installed in office by the American Provisional Governor Charles E. Magoon who immediately embarked for the United States, thus terminating American control over the island.—In March the Department of State had a somewhat sharp controversy with **Nicaragua** over the right of the latter country to cancel concessions without due process of law, and also over its refusal to carry out certain arbitration agreements made in 1907.

OTHER AMERICAN RELATIONS.—President Castro of **Venezuela** having refused to revoke the embargo against Dutch trade by November 1 (see last RECORD, p. 751), the **Netherlands** government on November 7 revoked the treaty of 1894, by the terms of which it had agreed to prevent conspiracy and filibustering from its West Indian possessions, and proclaimed a blockade against Venezuelan ports. Two Venezuelan coast-guard vessels were seized by Dutch cruisers in December, but the departure of President Castro for Europe and the subsequent revolution in Venezuela (see *infra* p. 364) put a stop to the unfriendly demonstrations. Acting-President Gomez revoked the embargo on January 1 and dispatched Dr. Paul, ex-minister of foreign affairs, as special commissioner, to arrange a settlement of Venezuelan disputes with the Netherlands and with France. Diplomatic relations were also resumed with Colombia and with the United States. In April, Great Britain, France, Holland, Denmark, Colombia and the United States announced that they would not permit ex-President Castro to stop in their respective possessions in West Indian waters, and the French government deported him from Martinique.—President Davila of **Honduras** sent an apology on February 7 to **Guatemala** for a derogatory reference to the latter country in his annual message to congress.—Friction became apparent in March between President Zelaya of **Nicaragua** and President Cabrera of Guatemala. It was reported that the former had massed troops on the frontier of Honduras (whose neutrality was guaranteed by the Washington Peace Conference), and had dispatched an armed force to Cartago in Costa Rica, the seat of the Central American High Court, for the evident purpose of intimidating the judges into making decisions favorable to himself in pending cases. Mexico and the United States were coöperating to prevent an armed conflict.—A dispute between **Mexico** and **France** over the ownership of Clipperton, a phosphate island off the coast of Guatemala, was submitted to the arbitration of the king of Italy.

II. THE UNITED STATES

THE ADMINISTRATION.—The closing months of President Roosevelt's administration were largely occupied with conferences and reports of commissions and with controversies with Congress. A new board of consulting engineers to investigate the work at the **Panama Canal**, and especially the Gatun dam and the comparative merits of the sea level and lock types of canals was appointed in December. The report of this board was transmitted to Congress on February 17 accompanied by a special

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message in which President Roosevelt endorsed the lock canal and declared the Gatun dam to be safe. The engineers estimated the cost of the canal at $360,000,000 and fixed the date of completion at January 1, 1915.—The first annual session of the **National Council of Commerce** (see RECORD for June, 1908, p. 358) organized largely through the efforts of Secretary Straus was opened on December 10. The fundamental idea of the Council was the promotion of foreign commerce. To give more weight to the body a permanent organization was effected.—On recommendation of President Roosevelt the commission appointed in August, 1908, to investigate the conditions of **country life** (see last RECORD, p. 752) called meetings of farmers and those interested in agricultural pursuits for December 5 in the several school districts of the United States.—The **National Monetary Commission** organized under the Vreeland-Aldrich currency bill (see last RECORD, p. 754) held its first session on November 23 and has been intermittently engaged in gathering information on the subject of currency reform.—A conference of the **National Conservation Commission**, governors, senators, representatives and leaders in commerce and industry was held at Washington in December; the policies on which particular emphasis was laid were: the treatment of all uses of waters as inter-related; more federal legislation developing waterways and dealing with water supplies; more scientific research into the extent of the nation's resources; the maintenance of the National Commission empowered to coöperate with state commissions. In transmitting the report of the National Commission to Congress on January 22, President Roosevelt again decried the present waste of resources and urged immediate action.—A North American conference on the conservation of natural resources composed of delegates from Mexico, Canada and the United States, was held at Washington in February, and on the suggestion of the conference, President Roosevelt announced his determination to issue an invitation for a general international conference to be held at the Hague in September, 1909.—A conference of representatives of workingmen, called by Secretary Straus, met at Washington on February 10 under the presidency of Commissioner Keefe of the Immigration service to consider especially **the problem of unemployment**, but it does not appear that any practical results were reached.—Secretary Newberry, on December 21, began a reform in **the navy administration** by issuing an order dissolving the old board of construction and creating a new organization of nine members. On account of some rather severe strictures on the administration of the navy department and on the "political" navy yards which have appeared in the periodical press, President Roosevelt in January appointed a commission of inquiry to investigate the defects in the law organizing the department, the lack of proper coördination in the department, methods of securing stricter accountancy and the general problem of increasing the efficiency of the navy. In the latter part of February the commission reported a plan for a new departmental system including a general council to aid the Secretary,

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a military council and the redistribution of the duties of the present bureaus in five divisions.—On March 18 the members of a commission to investigate **conditions in Liberia** with a view to improving the management of the affairs of that republic were named and the latter part of April the commission set out on the expedition.—The joint **commission on immigration** appointed in February, 1907 (see RECORD for June, 1907, p. 368), made public its first preliminary report on March 1.—In December President Roosevelt became involved in a controversy over **the Panama Canal purchase** with the Indianapolis *News*, The New York *World* and the New York *Sun* which had published statements to the effect that the United States had bought from American citizens for $40,000,000 Panama canal property which cost them only $12,000,000, that the administration had suppressed the evidences of the transaction, and furthermore that Douglas Robinson, the president's brother-in-law, and C. P. Taft, brother of the president-elect, were involved in the reprehensible transaction. On December 6 a letter from the president to William Dudley Foulke of Indiana was made public, stating that the *News* and the *Sun* "were guilty of the gravest and most reprehensible practices." A week later in a special message to Congress, the President denounced the *News* and also the New York *World* for the circulation of falsehoods, and in January proceedings were begun preliminary to actions for criminal libel against the newspapers concerned. In February, Joseph Pulitzer, C. M. VanHamm and R. H. Lyman of the *World* and Delavan Smith and Charles R. Williams of the *News* were indicted by a grand jury in the District of Columbia. Additional indictments were reported on March 4 by a federal grand jury in New York against the *World*. The following day United States Attorney J. B. Kealing at Indianapolis resigned his office rather than participate in the effort to have the proprietors of the *News* removed to Washington to answer charges. The matter was also taken up in Congress.—On its cruise around the world **the Atlantic fleet** (see last RECORD, p. 752) reached the Suez canal January 3, it left Gibraltar on February 6 and arrived sixteen days later in Hampton Roads, Virginia, where the vessels were reviewed by President Roosevelt from the yacht Mayflower and received a tremendous innovation from patriotic citizens who had come from all parts of the country to witness the imposing sight.—All of the fourth-class postmasters, numbering about 15,000, in the states north of the Ohio and east of the Mississippi, were placed in the classified service by executive order dated December 1.—Victor H. Metcalf, Secretary of the Navy, resigned on November 13; his place was taken by Truman H. Newberry, whose position of Assistant Secretary of the Navy was filled by the appointment of Herbert L. Satterlee. Robert Bacon was appointed Secretary of State on January 25 on the resignation of Secretary Root to accept the senatorship from New York; J. C. O'Loughlin was made Assistant Secretary. George S. Terry succeeded Hamilton Fish as Assistant Treasurer of the United States on November 13; December 1, Samuel Donnelly was appointed

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Public Printer; Daniel J. Keefe was given the post of Commissioner General of Immigration in December. Juan Sumulong was nominated a member of the Philippine Commission on January 28.—William H. Taft and James S. Sherman were inaugurated on March 4. Owing to a severe snow storm President Taft read his **inaugural address** in the Senate chamber. In his address he recommended the relief of railways from certain restrictions of the anti-trust law, federal supervision of bond issues by companies engaged in interstate commerce, the revision of the tariff with regard to revenue, protection "equal to the difference between the cost of production abroad and the cost of production here" and retaliation, the maintenance of the army and navy, a judicious treatment of the Asiatic immigration question minimizing the evils, legislation securing greater elasticity for the currency, the establishment of postal savings banks and a statute embodying "the best modern practice" controlling the conditions under which temporary restraining orders ought to be issued. President Taft also defended the lock type of canal at Panama and devoted considerable attention to the South and to the negro question, concluding that the Fifteenth Amendment must be obeyed and that "the tendency of Southern legislation today is toward the enactment of electoral qualifications which will square with that amendment."—President Taft's first list of appointments was as follows: Philander C. Knox, of Pennsylvania, Secretary of State; Franklin MacVeagh, of Illinois, Secretary of the Treasury; Jacob M. Dickinson, of Tennessee, Secretary of War; George W. Wickersham, of New York, Attorney-General; Frank H. Hitchcock, of Massachusetts, Postmaster-General; George von L. Meyer, of Massachusetts, Secretary of the Navy; Richard A. Ballinger, of Washington, Secretary of the Interior; James Wilson, of Iowa, Secretary of Agriculture; Charles Nagel, of Missouri, Secretary of Commerce and Labor; Huntington Wilson, of Illinois, Assistant Secretary of State; Beekman Winthrop, of New York, Assistant Secretary of the Navy; William Loeb, Jr., of New York, Collector of Customs for the District of New York; Lewis Dalby, of Virginia, an Indian Inspector; John P. McDowell, of Illinois, Receiver of Public Moneys at Willston, N. D.—Governor Charles N. Haskell of Oklahoma was indicted on February 3 by the federal grand jury at Muskogee for fraudulent transactions in scheduling the lots of that town, but the prosecution was temporarily abandoned in April on order from Washington. On the 29th of that month the United States district attorney at Tulsa was instructed to renew the prosecution and push the cases with vigor.

FEDERAL ELECTION ECHOES.—At a dinner given on November 5 by the Cincinnati Commercial Club, President-elect Taft sought to **assure the business interests** of the country by stating that "Every business man who is obeying the law may go ahead with all the energy in his possession; every enterprise which is within the statutes may proceed without fear of interference from the Administration when acting legally; but all interests within the jurisdiction of the federal government may expect a rigid en-

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forcement of the laws against dishonest methods." Shortly afterward in a letter to a labor leader, Mr. Taft expressed his peculiar gratification at the "independence and courage of the intelligent wage-earners of the country in refusing to be delivered to one party or the other." In a statement given out by Mr. Bryan on November 5, he expressed his belief, that, in spite of the defeat, the measures advocated in the platform of the Democratic party would be accepted by the American people and when questioned a few days later with regard to a **fourth candidacy**, he replied that "if the Democratic party and the contingencies should demand it," he would again accept the nomination. The statement, filed at Albany in accordance with the law of the state and pre-election promises (see last RECORD, p. 759), by Treasurer Sheldon of the Republican National Committee, showed that the **campaign contributions** to the party, 12,330 in number, amounted to $1,665,518. Among the heaviest contributors were C. P. Taft, Larz Anderson, Andrew Carnegie, J. P. Morgan, William Nelson Cromwell, Whitelaw Reid, and Jacob H. Schiff. The Democratic Treasurer, Herman Ridder, reported the receipt of $620,644.

THE DEPENDENCIES.—At the November elections in **Porto Rico**, the Unionist party advocating independence for the island was successful everywhere, the Republicans not gaining a single seat in the House of Delegates. In the latter part of February nine members in the House joined in presenting a resolution providing for a confederation of Porto Rico, Cuba, Santo Domingo and Haiti as the West Indian Republic, but the House in secret session decided to take no action on it. The House refused to pass the appropriation bill at the regular session, and repeated the refusal at two extraordinary sessions called by the Governor, on the ground that the Executive Council which acts as the Senate had disapproved certain reform bills proposed by the House. Two delegations, one representing the Government and the other the House went to Washington in April to lay the situation before the federal authorities. The subject was then taken up in the cabinet meeting of April 6 and referred to Attorney-General Wickersham for investigation and report. Many of the popular leaders in the island are now demanding an elective senate in place of the Executive Council. Meanwhile the finances are in a disorganized state.—On instructions from the Legislative Assembly of the **Philippine Islands**, the resident commissioners at Washington made speeches in Congress in the tariff debate (*infra*, p. 354) opposing especially that part of the Payne bill providing for the free admission of the products of the United States into the islands, mainly on the ground that it would greatly reduce the revenue. One of the commissioners asked for the passage of a measure ultimately favoring the independence of the islands. Teodoro Kalaw, editor of a radical Filipino newspaper, was fined and imprisoned in March for libeling Commissioner Dean C. Worcester. Governor-General Smith decided that Dominador Gomez, leader of the Federation of Labor, could not hold a seat in the Manila municipal council because he was not a citizen of the islands and had been convicted of crime.

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CONGRESS.—The closing session of the Sixtieth Congress opened at noon, December 7. Speaker Cannon, Vice-President-elect Sherman and Mr. Champ Clark the new leader of the minority were received with enthusiastic applause. The following day President Roosevelt sent a lengthy and characteristic message which added nothing new by way of general principles to his previous communications to the legislature. He recommended the establishment of a "thoroughly good currency system," larger and more definite power for the Interstate Commerce Commission with telegraph and telephone companies under its supervision, modification of the Sherman anti-trust law to admit of certain combinations under federal control, the establishment of postal savings banks, the reduction of large fortunes by a progressive inheritance tax and special measures for conserving natural resources.—The president at once became involved in a bitter controversy with Congress over that portion of his message referring to an amendment (added the year before to an appropriation bill) relative to **the Secret Service** which provided that no detail should be made from that Service and no transfer therefrom. The president had declared that this amendment was of benefit only to criminal classes and that the chief argument in favor of it had been "that the Congressmen did not themselves wish to be investigated by Secret Service men." The House of Representatives after a stirring discussion passed a resolution asking the president for the information on which he based his statements and also regarding corrupt action by any member of that body; the Senate resolved to refer that portion of the message to the Committee on Appropriations for investigation. The president, on January 4, sent a long message to the House in reply to the resolution, and the House after a few days' delay voted to lay on the table this message and that portion of the first message which related to the Secret Service. During the progress of the dispute, the president became engaged also in a personal controversy with Senator Tillman over charges to the effect that the Senator had been involved in questionable land transactions, but no very definite results accrued.—While the contest between the president and Congress over the Secret Service question was in progress, another quarrel arose between the Senate and the Executive over the action of the former body in "directing" the Attorney-General to transmit information as to whether any steps had been taken to prosecute **the United States Steel Corporation** under the anti-trust law, for absorbing the Tennessee Coal and Iron Company in November, 1908. The president responded, stating that he had not done anything in the matter because he had been informed that the action of the United States Steel Corporation had been taken to prevent a serious business failure in New York, and added that he had instructed the Attorney-General not to reply to the demand for his reasons for his non-action, because the Senate had no authority to give directions of this kind to the head of a department. The Senate thereupon resolved that a committee be appointed to inquire whether the president had any authority to permit the merger, and after a

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searching investigation the committee reported on March 2 condemning the president's action. By agreement, however, the report was not to be considered the official finding of the committee but merely a representation of the individual views of the majority that signed it.—After a spirited debate in the Senate on **naval appropriations**, in which the effect of politics on the location of naval stations was thoroughly aired, it was voted to provide two battleships of 21,000 tons each.—On February 5, President Roosevelt vetoed the **Census bill** on the ground that Section 7, providing for appointments to the census-taking force, really authorized a continuance of the spoils system in what was essentially a scientific undertaking.—The ship subsidy bill was defeated in the House on March 2 by a close vote of 172 to 175.—An attempt to increase the salaries of the president, vice-president, the Speaker and the federal judges was defeated in the House, but a concession was made in favor of the president whose salary was raised to $75,000 on condition that he was to pay his ordinary traveling expenses out of this amount.—The Select Committee on Pulp and Paper (see last RECORD, p. 754) reported to the House on February 19, favoring the reduction of duty on news print paper from $6 to $2 per ton and a merely nominal duty on wood pulp.—In the latter part of January Senate and House Committees reported against any amendment of the Sherman anti-trust law.—February 9 the president submitted to Congress the report of the Commission on Country Life (see last RECORD, p. 752) with a special message recommending the establishment of a Federal Country Life Department. About a week later the president sent another special message urging the establishment of a Children's Bureau to investigate the conditions of child life and recommending legislation improving the condition of dependent children in federal territories.—Shortly after the announcement that Mr. Taft would appoint Senator Knox as Secretary of State under his administration, it was discovered that the senator was constitutionally ineligible on account of the provision of the federal constitution relating to the appointment of a senator or representative to a civil office, the emoluments of which have been increased during his term of service. Under the act of March 4, 1907, the salaries of departmental heads had been increased to $12,000. In February, Congress passed a relief bill purporting to remove the disability by reducing the salary of the Secretary of State to the amount provided by the law in force May 1, 1904.—The latter part of February Congress passed a compromise bill for the settlement of the controversy over the Brownsville affair (see below, p. 363).—The total appropriations of the session amounted to $1,044,014,298.23.—The proclamation calling a **special session** of Congress to meet on March 15 was issued by President Taft on March 6. Two days before the date set for the opening of Congress the Republican caucus of the House of Representatives, by a large majority vote, nominated Joseph G. Cannon for Speaker, and this nomination was accepted by the House, with 204 votes. Twelve insurgent Republican votes were cast against it. Champ Clark was

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unanimously chosen leader of the Democratic minority. A motion to adopt the old rules was defeated but an attempt of the Democratic leader to secure the appointment of a committee to revise the rules was also defeated by the defection of several Democratic members. Thereupon, Mr. Fitzgerald, a Democratic member from Brooklyn, offered a resolution providing for the adoption of the old rules with several amendments and with the aid of twenty-two other Democratic members secured its passage. The amendments do not materially reduce the power of the Speaker. On March 16th, President Taft laid before Congress a message of less than 400 words in which he urged the importance of speedy action on the tariff and for guiding principles referred Congress to his inaugural address (see THE ADMINISTRATION, *supra*, p. 350). In conclusion he ventured to suggest that the less time given to other legislation during this session the better for the country. On the following day, Mr. Payne chairman of the Ways and Means committee laid before the House **the tariff bill** on which the committee had been engaged for four months holding hearings and preparing the draft (see last RECORD, p. 754). It embraced 234 printed pages and among other things provided for reductions of from 30 to 50 per cent in the iron and steel schedules with ore free, free wood pulp and hides, reductions of about one-half in the duties on lumber and print paper, free bituminous coal and agricultural implements, free statues and paintings when twenty years old, a duty of 8 cents a pound on tea, an increase in the duty on cigarettes, a tax on inheritances and certain stipulations for reciprocity. There was an increase in the rates on some commodities including cocoa, chicory, spices, lemons, pineapples and watch movements. Certain quantities of sugar and tobacco were to be admitted free from the Philippines; an issue of $40,000,000 Panama canal bonds to reimburse the Treasury for the purchase money paid out was authorized and also an issue of $250,000,000 of one year notes to cover the deficit. The bill was reported from the committee the day following its introduction and debate began on the 22nd. After a week's discussion the Ways and Means committee recommended about sixty changes in the original bill including the rejection of the duty on tea and the reduction of the duty on lumber. Some further changes were made during the debate and on the evening of April 9 the bill passed the House by a vote of 217 to 161, one Republican voting against it and four Democrats from Louisiana for it, on the final count. In the voting on the amendments from time to time party lines, especially on the Democratic side, were badly broken. On the morning of April 12, Senator Aldrich introduced **the Senate tariff bill** and proposed to substitute it for the House bill. His bill in general followed more closely the provisions of the Dingley law, making no recommendations concerning hides, wood pulp and bituminous coal which the House had placed on the free list, and passing the inheritance tax over in silence. In opening the debate on his bill on April 19, Mr. Aldrich declared that his measure would raise all the revenue needed, that retrenchment in expenses must come, that in-

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come, inheritance, or any other form of tax in addition to the straight customs duties should be deprecated; and that the Panama canal bonds should bear three per cent interest. The attacks on the Aldrich measure were based principally on the ground that it was so nearly like the Dingley law that it scarcely deserved the name of a revision. The Finance Committee reported the bill back to the Senate on April 30 with amendments, one of which provides for a maximum tariff of 25 per cent above the general tariff bill rates to be applied after March 31, 1910, in the discretion of the president, against all countries discriminating against the United States. It also gives the president power to employ a tariff commission for gathering information. Owing to the delay in the Senate's action on the bill a concerted movement, embracing, it was reported, several hundred thousand manufacturers, merchants and business men, was organized the last of April to stop all tariff agitation and secure the immediate creation of a competent tariff commission.

THE FEDERAL JUDICIARY.—A measure enacted under police power is not a violation of the interstate commerce clause because it incidentally affects interstate commerce, and therefore a state may prohibit the possession of game during a closed season even if brought from some other commonwealth (Silz *v.* Hesterberg).—According to Twining *v.* the State of New Jersey, due process under the Fourteenth Amendment does not require exemption from compulsory self-incrimination in criminal proceedings in state courts.—The Court held in Prentis *v.* Atlantic Coast Company that a state may unite legislative and judicial powers in the same body, that the valuation of the property and the income arising under a rate will determine whether such rate is confiscatory, and that the court of equity will enjoin a confiscatory rate only after it is determined upon by the state court having final jurisdiction.—A state may seize and destroy food unfit for use without previous notice and an opportunity to be heard (North American Storage Company *v.* Chicago).—In Harriman *v.* Interstate Commerce Commission the Court decided that the Commission was not entitled under the law to press questions as to private transactions even related to dealings in securities of interstate railroads, when the investigation of such transactions was begun on the Commission's initiative.—It was maintained by the Supreme Court in Kopel *v.* Bingham that Porto Rico, although not incorporated into the United States, was a completely organized territory and consequently the governor had the power of other territorial governors to issue requisitions for criminals.—In fixing rates, the cost of reproduction is not a fair measure of value unless a substantial allowance is made for depreciation, according to Knoxville *v.* Knoxville Water Company.—In upholding the eighty-cent gas law of New York in Willcox *v.* Consolidated Gas Company, the Supreme Court held that franchises are property to be considered in fixing rates but the increased value of such franchises should not be allowed; that "good will" is not an element of value when a corporation has a monopoly, and that in this case six per cent was a fair re-

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turn.—The state has jurisdiction over acts done within its territory in pursuance of agreements made in another state—such was the opinion of the Supreme Court in Waters-Pierce Oil Co. *v.* Texas (see below, p. 358).—According to Louisville & Nashville Railway Company *v.* Central Stock Yards Company a provision in a state constitution requiring one carrier to deliver its cars to a connecting carrier without providing adequate protection for their return and compensation for use is taking property without due process.—Under the opinion of the Supreme Court in the case of the Continental Wall Paper Company *v.* Louis Voight & Sons Company, a vendee of goods purchased from an illegal combination in restraint of trade in pursuance of an illegal agreement may plead such illegality in defence to a suit for payment.—The Arkansas anti-trust law compelling corporations doing business within the state to produce for investigation books and papers kept out of the state was sustained in Hammond Packing Company *v.* Arkansas.

STATE AFFAIRS.—With few exceptions the legislatures of all the States have been in session this winter and there appears to be a slacking up in the tendency toward radical public service and direct nominations legislation. Public service bills were introduced in the legislatures of the following states and failed to pass: West Virginia, Indiana, Kansas, South Dakota, Idaho, Utah, Nevada, Oklahoma, Iowa, Nebraska, Colorado, Maine, and New Hampshire.—A statutory prohibition bill passed the **Arkansas** legislature in March.—The Japanese question in **California** (see RECORD for June, 1908, p. 351) was again raised by the introduction into the state legislature of bills barring Japanese and Chinese from schools and from corporation directorates, and otherwise discriminating against them. This was followed by a renewal of the anti-American agitation in Japan, and President Roosevelt on January 16 telegraphed to Governor Gillett of California urging delay. The telegram was speedily followed by a letter stating that the present arrangement with Japan was working successfully and pointing out the unwisdom of stirring up more bitterness over the question. Governor Gillett thereupon sent a special message to the legislature warning the members against anti-Japanese legislation. After lengthy debates and further communications from Washington, the obnoxious measures were either defeated or dropped, but by a vote of 28 to 7 on February 26 the senate of the State adopted a resolution urging Congress not only to maintain intact the existing Chinese exclusion laws but also to extend their provisions so as to apply to and include all Asiatics. Both houses passed a bill authorizing the State Labor Commission to take an enumeration of all Japanese residing in the state. The California legislature passed a direct nominations law on March 22 and it was approved by the governor.—A new election tribunal organized by the last legislature of **Connecticut** for the purpose of hearing certain cases arising under the corrupt practices act was convened in New Haven on December 12, and on the first case, brought against Governor-elect George L. Lilley, the act was declared un-

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constitutional.—A local option bill was passed by the **Idaho** legislature in February.—A deadlock occurred in **Illinois** over the refusal of the legislature to accept the results of the primary under the new law (see last RECORD, p. 759) which gave Albert J. Hopkins the largest vote for United States senator, the law having expressly provided that the vote at the primary was to be regarded only in the nature of a recommendation.—Under the local option law passed by the **Indiana** legislature (see last RECORD, p. 760) a large number of counties have voted "dry" and an attempt of the new Democratic legislature in March to repeal the law was defeated. In January, Benjamin F. Shively was elected to succeed Senator Hemenway. John W. Kern was Mr. Shively's most formidable opponent.—On November 24, the legislature of **Iowa** (see last RECORD, p. 760) elected Governor Albert B. Cummins United States Senator to fill the vacancy caused by the death of Senator Allison.—It is believed that an end has been put to night riding in central and eastern **Kentucky** (see last RECORD, p. 760) by a satisfactory arrangement between the Burley Tobacco Growers' Association and the American Tobacco Company disposing of the crops pooled in 1906 and 1907. Six night riders were found guilty of the murder of Quentin Rankin (see last RECORD, p. 760) by a court at Union City, Tennessee, on January 9 and were sentenced to death. Two others implicated were given twenty years in the penitentiary.—A large majority of the twenty-seven counties of **Michigan** which voted on the temperance question on April 5 went "dry" and the Republican state ticket, only minor offices being voted for, was elected by a plurality of about 75,000.—The lower house of the **Missouri** legislature passed on April 14 a resolution to submit a prohibition constitutional amendment to popular vote.—The **Nebraska** legislature passed laws providing for guaranteed bank deposits, physical valuation of public service corporation property and direct election of United States senators. The lower house of the **Nevada** legislature on February 2 passed resolutions endorsing the action of California with regard to the Japanese and urging that state to pay no attention to the remonstrances of President Roosevelt.—The **New Hampshire** legislature appropriated $1,000,000 for highways and passed direct primary and anti-lobbying bills.—Two measures supported by Governor Hughes—the bill providing for direct nominations and the bill placing telegraph and telephone companies under the supervision of the Public Service Commission—were defeated by the **New York** assembly by an overwhelming majority on April 8. In December, Governor Hughes appointed a commission of nine men, including bankers, business men and economists, to investigate exchanges in New York. On January 19, Elihu Root was chosen United States Senator to succeed Senator Platt.—The constitutional amendment establishing the initiative and referendum in **North Dakota** (see last RECORD, p. 760) was defeated in January, largely, it is reported, through the fear of the temperance element that it might be used to undo prohibition.—There has been a wave of prohibition in **Ohio**; fifty-five of the eighty-eight counties were dry on December 6 and the local op-

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tion elections since that date have resulted in several additional victories for the temperance element. On January 12, Theodore Burton was elected United States Senator by the state legislature to succeed Senator Foraker.—George E. Chamberlain, a Democrat, declared to be the people's choice for United States Senator at the November election in **Oregon**, was chosen for that place on January 19 although the state legislature was Republican, enough members of that party having pledged themselves to abide by the result of the popular election. An attempt to raise the Japanese exclusion question in the legislature was defeated in February.—Application for a supersedeas removing the cases of the men convicted of defrauding the state of **Pennsylvania** in connection with the furnishing of the Capitol building at Harrisburg to the Superior Court at Philadelphia was granted in December and the men released on bail (see last RECORD, p. 760). George T. Oliver, Republican, of Pittsburg, was elected on March 16 by the Pennsylvania legislature to fill the unexpired term of Senator Knox, who resigned to become Secretary of State.—Local option was killed in **South Carolina** in February after a sensational filibuster lasting several days.—The legislature of **Tennessee** passed a state-wide prohibition bill on January 12–13 and repassed it a week later over Governor Patterson's veto. This was followed by a law prohibiting the manufacture of intoxicating liquors in the state after January 1, 1910, which was likewise vetoed by the governor and promptly repassed.—Following the decision of the Supreme Court in the Waters-Pierce Oil Company case (*supra*, p. 356) the **Texas** legislature amended the anti-trust law by increasing the fine that may be imposed from $50 to $1500 a day and fixing the maximum term of imprisonment at twelve instead of five years.—The **Vermont** legislature has changed the Board of Railway Commissioners into a Public Service Commission with supervision over railroads, telephone, telegraph, gas, water and power companies, and with authority to prevent discriminations in rates and to control stock issues.—A compromise local-option bill making each incorporated city and each county district a unit was passed by the **Washington** legislature in March. An anti-race track gambling bill was also enacted.—Senator Isaac Stephenson who was nominated by the Republicans of **Wisconsin** at the direct primary to succeed himself as United States Senator was stoutly opposed by the state legislature on the ground that he had won his victory only by a lavish and corrupt use of money at the primary. After an investigation and some heated debate, Mr. Stephenson was elected on the twenty-third ballot taken March 4.

MUNICIPAL AFFAIRS.—Robert F. Maddox, the independent and reform candidate for mayor of **Atlanta**, Georgia, defeated the regular Democratic nominee in the city election of December.—In a report submitted to the Mayor on November 15, the Finance Commission of **Boston** declared that a "lamentable picture of dishonesty and greed was disclosed" in the administration of the city; the Commission recommended a reorganization of the city government centralizing power in the hands of the mayor,

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reducing the number of the council to nine and vesting the control of finances in a Finance Commission. These recommendations were laid before the state legislature for action.—After several weeks' investigation of charges growing out of the first primaries held in **Chicago** under the new law (see last RECORD, p. 760) a special grand jury returned eighty-one indictments against politicians and other persons for every variety of fraudulent practice. The regular organization candidates were generally victorious against the Municipal Voters' League in the city elections of February 23.—Judge Lindsey, of the juvenile court in **Denver**, to whom neither party would give a re-nomination, was reëlected in November as an independent candidate, receiving 29,000 votes against a total of 17,000 polled by his opponents.—Charges of corruption and misgovernment having been brought against Mayor Harper of **Los Angeles**, the Municipal League secured the necessary signatures to act under the recall provision of the city charter; and at an election held March 26 the reform candidate, George Alexander, was elected mayor, Mr. Harper having been compelled to withdraw from the race on account of the charges against his administration.—The reëlection of John F. Ahearn to the presidency of the borough of Manhattan in the **City of New York** by the board of aldermen after his removal by Governor Hughes (see last RECORD, p. 761) was declared illegal and void by the Appellate Division of the Supreme Court on March 5. The charges against District Attorney William T. Jerome (see last RECORD, p. 761) were dismissed by Governor Hughes on March 23. The eighty cent gas law (see RECORD for June, 1908, p. 363) was upheld by the Supreme Court of the United States on January 4 (see FEDERAL JUDICIARY, *supra*). The sum to be returned to consumers amounted to about $9,000,000. The Charter Commission (see RECORD for June, 1908, p. 364) made its report to the legislature in March recommending the abolition of the board of aldermen and the substitution of an unpaid council of thirty-nine members, the concentration of executive and financial business in the hands of the Board of Estimate and Apportionment, the increase in the mayor's salary to $25,000 and reform in the system of accounting and purchasing.—A startling sensation was precipitated in **Pittsburg** on December 21, when seven prominent members of the city council and two bankers were arrested for bribery, conspiracy and corrupt solicitation, on charges preferred by the Voters' Civic League. This action grew out of an investigation made by detectives under the direction of Mayor Guthrie and the League, which had been in progress for nearly a year. On January 12, Charles S. Cameron, president of the Tube City Street Railway Company, was found guilty of attempting to bribe a councilman to vote for a franchise he desired for his company. There have been several other convictions; indictments were returned on March 22 against six other councilors and business men connected with the scandal, and the investigation is still in progress.—The bribery scandals of **San Francisco** (see last RECORD, p. 761) had a dramatic climax on November 12 when Francis J. Heney, who

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had been in charge of the prosecutions for two years, was shot and seriously wounded by Morris Haas whom he had exposed as an ex-convict a short time before. The following day Haas committed suicide in the county jail where he was confined. December 10, Abraham Ruef was convicted on the charge of having bribed Supervisor Furey to aid the United Railroads Company in securing the overhead trolley franchise, and a few days later the court imposed a sentence of fourteen years in the penitentiary. In February, ex-Supervisor M. W. Coffey was found guilty of having accepted a bribe in connection with the United Railways overhead trolley franchise. The latter part of January, Patrick Calhoun was brought to trial; there are seventeen indictments against him relating to the overhead trolley franchise for which he is said to have paid $250,000. On December 31, E. A. S. Blake was sentenced to imprisonment for four years for attempting to bribe a juror at the first trial of Abraham Ruef.—The commission form of municipal government went into effect in **Waco**, Texas, on April 16.

THE TRUST PROBLEM AND THE RAILWAYS.—The hearings in the proceedings on the part of the federal government looking toward the dissolution of **the Standard Oil Company** (see last RECORD, p. 762) continued with occasional intermissions into January, and on April 5 the case came to a hearing before four judges of the Circuit Court of Appeals at St. Louis. Frank B. Kellogg, speaking for the federal government, after charging the monopoly with discrimination in prices, making rebates, bribing railway employees and sustaining dummy independent concerns to do the price cutting, demanded that an end should be made to it. The argument concluded on April 10 when the judges withdrew to consider the record in the case embracing more than eleven million words prepared by a score or more of eminent attorneys after almost two years of hard labor. The petition for a rehearing filed by the federal government in the case of **the $29,240,000 fine** imposed on the Standard Oil Company (see last RECORD, p. 762) was denied by the Circuit Court of Appeals in Chicago on November 10. Attorney-General Bonaparte then filed a petition in the Supreme Court of the United States, on November 23, urging the court to issue a writ of certiorari to the Circuit Court of Appeals to review the judgment of that court reversing the original ruling by Judge Landis; but this petition was denied by the Supreme Court on January 4. The case then went back to the District Court in Chicago for retrial, and, on a hearing before Judge Anderson, the jury, on March 10, found the Standard Oil Company not guilty. On March 15 Judge Hazel at Buffalo denied the motion of the Standard Oil Company for a new trial in the Jamestown rebating case (see last RECORD, p. 762) and imposed a fine of $20,000.—The federal government on December 1 began to take testimony in its action designed to dissolve **the Union Pacific Railroad system** as a merger in restraint of trade violating the Sherman anti-trust act. The government asked the Court to set aside the ownership by the Pacific Railroad Company of its subsidiaries, the Southern Pacific, the San Pedro, Los Angeles and

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Salt Lake roads, and the ownership by either the Union Pacific or the Oregon Short Line of stock in the Atchison, Topeka and Santa Fe, the Great Northern and the Northern Pacific roads, these roads being deemed competitors of the Union Pacific.—On February 23, the Supreme Court of the United States upheld the verdict of the Circuit Court for the southern district of New York imposing fines aggregating $134,000 on **the New York Central Railroad Company** for granting rebates to the American Sugar Company. In March the Company pleaded guilty to rebating in connection with the transportation of cooperage supplies and was fined $10,000.—A decision of the Interstate Commerce Commission, in December, held that allowances for the transfer of sugar from refineries to trains were essentially rebates and in violation of the law. These allowances amounting from 2 to 4½ cents per hundred pounds have been in vogue since 1885 and have been made public only since the passage of the Elkins act of 1903.—The final decree of the United States Circuit Court of Appeals in the federal government's suit to dissolve the **Tobacco Trust** (see last RECORD, p. 762) was filed on December 16, with Commissioner Shields of New York. The decree provided that the petition against certain companies, including the Imperial Tobacco Company and the British-American Tobacco Company be dismissed, and added that the other defendants concerned, The American Tobacco Company, The American Snuff Company, The American Cigar Company, American Stogie Company and the Mac-Andrews & Forbes Company constituted combinations in restraint of trade and were further enjoined from engaging in interstate trade until they could show to the court the restoration of reasonable competitive conditions. The restraining order was stayed, however, on appeal to the Supreme Court.—The hearings in the matter of the **Powder Trust** (see last RECORD, p. 762) have been continued.—The first of January, the Supreme Court decided that the Chicago and Alton Railway Company would have to pay a $60,000 fine for granting rebates to Schwartzschild and Sulzberger on the shipment of packing-house products from Kansas City, Missouri, to eastern points.—In November, the government began an action against the Sugar Trust to recover $3,624,121 alleged to be due in duties and forfeitures because of frauds in weighing on the Trust's docks. On April 29 it was announced that the government would accept an offer from the Trust of a large sum in settlement of all claims, but that criminal prosecutions would be continued.—Judge McPherson, of the United States District Court at Kansas City, Missouri, handed down on March 8 a noteworthy decision in favor of the railroads operating in that state by declaring invalid the state two-cent fare and the maximum freight-rate law.—During the latter part of January the government filed thirty-five suits againt the Oregon and California Railroad Company, the Southern Pacific Railroad Company and many other corporations and private persons to recover 353,000 acres of land valued at $15,000,000 alleged to have been wrongfully held by the railway companies and wrongfully sold to other parties.—After lengthy proceedings be-

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ginning in December, two Standard Oil concerns, the Standard Oil Company of Indiana and the Republican Oil Company of Ohio were ousted from **Missouri** under a decision of the Supreme Court of that state rendered in March, and the Waters-Pierce Company, a Standard Oil subsidiary concern was permitted to continue business under a pledge that it would obey the law of the state against monopolies and free itself from control by the Standard. The three companies were also heavily fined.—In January, the International Harvester Company was ordered to pay a fine of $12,600 by the **Kansas** Supreme Court for violating the anti-trust laws of the State.—The decree of the Supreme Court of **Texas** imposing a fine of $1,623,000 on the Waters-Pierce Oil Company of St. Louis and ousting it from the state was sustained by the Supreme Court of the United States on January 18 (see above, STATE AFFAIRS).

LABOR AND CAPITAL.—On December 23, Justice Wright, at Washington, sentenced Samuel Gompers, John Mitchell, and Frank Morrison, all officers of the American Federation of Labor, to imprisonment in the District of Columbia jail for violating the injunction issued by Justice Gould of the District Supreme Court in **the Bucks Stove and Range Case** (see last RECORD, p. 764). Justice Wright was very bitter in his denunciation of some of the methods of organized workingmen declaring that they had been undone "through the errors of misguiding leaders, swollen by pigmy power." The three defendants were released on bail pending an appeal in the case which went first to the District Court of Appeals and will go to the United States Supreme Court, so that probably a year's time will elapse before a final decision is reached. The Court of Appeals for the District of Columbia, on March 11, handed down a decision confirming the original injunction issued by Justice Gould with the modification that the defendants could not be restrained from making reference in their publications to the boycott, although they could not interfere with the company's business by placing it on an "unfair" list.—A serious strike on the Pennsylvania lines west of Pittsburg was averted in December when the Federal Arbitration Board induced the railway company to concede the demands of the Locomotive Engineers.—A strike by fifteen hundred clay workers along the Raritan river in New Jersey culminated on November 25 in violence and several strikers were shot and seriously injured by deputy sheriffs. The state militia was ordered out by Governor Fort to keep order.—At the convention of the United Mine Workers at Indianapolis in February, Thomas L. Lewis was reëlected president of the organization. In March negotiations for terms with the **anthracite coal operators** were opened in view of the expiration of the three-year agreement on March 31, but the demands of the miners for better wages were refused by the operators and for a time a serious strike seemed inevitable. However, during the last week in April, the contestants were able to come to terms.—A strike of about 20,000 union **hatmakers** was ordered by the President, John A. Moffitt and the Executive Board of the Union against the National Fur Hat

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Manufacturers' Association for discontinuing the use of the label in its shops. The manufacturers published a statement to the affect that the union had violated an agreement made in July, 1907, and announced that the hat works would be run as open shops. No adjustment has yet been reached. —Neil McDonald, business agent of the Lynn Building Trades Council was fined in the Superior Court of Boston on February 13 for contempt, the court ruling that any union man having knowledge of an injunction issued would be found guilty of contempt though he was not named individually when the injunction first issued.

The Race Problem and Lynching.—The Brownsville affair (see RECORD, for June, 1907, p. 365) was revived in December by a special message from President Roosevelt to Congress in connection with what purported to be a confession of a former soldier which cleared up the mystery. The matter was again the subject of an acrimonious debate which resulted in February in the passage of a bill granting to the negro soldiers discharged for their alleged shooting up of Brownsville the right to re-enlist upon proving their innocence of the charges, and providing for a military board of five officers to examine into the individual cases and report from time to time to the Secretary of War. The final report of the board is to be submitted within one year and the soldiers re-instated are to have pay and allowances since the date of their discharge.—In January one conviction was reported in the cases arising out of the race riots at Springfield, Illinois (see last RECORD, p. 764); Abraham Rayner, charged with being the leader of the mob that lynched the negroes and burned the houses, was acquitted on trial for murder and again when tried for destroying property, but was found guilty of stealing a militia officer's sword worth $15.—An unidentified negro who broke into the home of a white man at Statenville, Georgia, on December 10 was tracked to a swamp by a mob the following day and killed.—Richard Robertson, who shot and killed Deputy Sheriff Patch at Mobile, Alabama, was lynched during the morning of January 23. —On February 9, Roby Baskin, a negro who confessed the murder of a white minister was hanged at Houston, Mississippi, by a crowd of over 300 citizens.—Dave Alexander was hanged to a telegraph pole at Pensacola, Florida, on April 5 for the murder of a policeman.—Three negroes were lynched at Marshall, Texas, on April 30 for killing a deputy sheriff.

III. LATIN AMERICA

The **Argentine** Congress authorized in December the expenditure by the government of about seventy million dollars on armaments, and in February the issue of a fifty million dollar internal loan.—The **Bolivian** Congress directed the president in November to negotiate a loan of two and a half million dollars, the most of which would be spent on schools and courts.— The legislature of **Brazil** voted in November a coffee loan of seventy-five million dollars and in December authorized the expenditure of seventy million dollars on armaments. Riots against the lighting and power company

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of Rio de Janeiro were suppressed by the government in January.—The general **Cuban** election on November 14 resulted in a victory for the Liberals and the choice of General José Miguel Gomez as president. The formal transfer of power by the provisional government to the new republican officers took place on January 28, and the American troops were gradually withdrawn. Among the first acts of the new Cuban Congress were the passage of a general amnesty bill and the suspension, at the discretion of the president, of the export duty on tobacco, sugar and liquors. A much-discussed bill forbidding the further purchase of lands in Cuba by aliens was defeated, as was also a measure which in substance called for the recognition of negroes in appointment to offices to the extent of thirty per cent of the entire number appointed. Slight disturbances among the rural guards of Santa Clara province were easily suppressed in March.—Early in December, an uprising at Port-au-Prince, **Hayti**, culminated in the flight of Nord Alexis, president of the republic during the last six years, and the assumption of supreme authority by General Antoine Simon. Alexis took refuge in Jamaica, and the Haytian legislature on December 17 unanimously confirmed the provisional presidency of General Simon.—The **Mexican** congressional building was destroyed by fire on March 23, together with important archives. President Diaz signified in April his willingness to accept another renomination.—President Castro left **Venezuela** in November to receive medical treatment in Germany. He landed in Spain, was permitted to cross France, and arrived at Berlin on December 14. The seizure of Venezuelan vessels by Dutch warships (see *supra*, p. 347) caused rioting in the republic against the Castro régime, and the first vice-president, Dr. Juan Vincente Gomez, who had been left in charge of the government, declared that he had discovered a plot against his life in which President Castro was implicated. Gomez, who was then proclaimed president, deported the military leaders who had supported the former president, dismissed a number of Castro ministers and seized the national bank. He exacted an oath of loyalty from civil and military officials and was recognized by the powers. Ex-President Castro sailed for home in April, but the new Venezuelan government threatened his arrest on charges of murder and embezzlement if he should return, and Great Britain forbade his landing at Trinidad. He went ashore at Martinique, but the French government ordered his deportation. He announced that he would reside temporarily in Spain.

IV. THE BRITISH EMPIRE

THE UNITED KINGDOM.—The session of **Parliament** which closed on December 21 was marked more by failure on the part of the ministry to pass important measures than by successes. Little was accomplished aside from the old-age pension law (see last RECORD, p. 766), which went into effect on January 1. Some reforms in the child-labor laws were adopted, but the government's bill for an eight-hour day in the mines was

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so amended that the working day was practically fixed at nine hours. The Birrell Education Bill, published on November 21, was withdrawn on December 4 on account of the determined opposition of the House of Lords and the inability of the government and the ecclesiastical authorities, notably the archbishop of Canterbury, to agree on the details. After many months of discussion in parliament and much popular agitation throughout the country, the Licensing Bill, which provided for a tax on the liquor business and the gradual curtailing of the trade, passed the Commons on November 20 by 350 votes to 113 but a week later was decisively rejected by the Lords by a vote of 272 to 96. At the reopening of parliament on February 16, the government foreshadowed estimated increased expenditures of a hundred million dollars for armaments and old-age pensions, and promised important measures dealing with Welsh disestablishment, Irish land, unemployment and sweating. The budget for 1909–1910, introduced by Mr. Lloyd-George on April 29, contained provisions for state insurance against loss of employment and state aid in the development of natural resources, and appropriations of $500,000 for labor exchanges for both skilled and unskilled labor and of one million dollars to start afforestation, the reclamation of waste land and the encouragement of small agricultural holdings; the new taxation, by which the estimated deficit of nearly eighty million dollars would be made good, was said to be the most comprehensive revision of the British fiscal system since the Gladstonian free-trade budgets; the chancellor's proposals embodied a super-tax on incomes of over $25,000, taxes on mining royalties, on urban undeveloped land, on the ungotten mineral valuation of land, on the unearned increment, on stock-exchange speculation, increased death duties, a whisky duty increased by a third, and additional taxes on tobacco and motor cars.—The rejection of the Licensing Bill by the **House of Lords** after it had passed the Commons by large majorities, coupled with the defeat and abandonment of the Education Bill, rendered acute the strained relations between the two houses of parliament, and it was reported that the government, in case of an early dissolution, would make the reform of the upper house the main issue in the campaign. A committee appointed by the Lords nearly two years previously to consider the reformation of that house, proposed in December to abolish heredity as the sole qualification for membership and to require that a member of the upper house must have sat for ten years in the Commons or have held an important public office or have been elected by the peers. The committee of the Lords further admitted that the party in power in the Commons ought always to be able to count on a substantial following in the upper house and recommended that the number of the Lords should be reduced from 608, as at present, to about 350.—The **Irish** Nationalist Convention, held at Dublin in February and attended by about two thousand delegates, passed resolutions demanding home rule and expressing confidence in the Irish parliamentary party. Mr. John Redmond expressed his approval of the Birrell Irish Land Bill, which aims to enlarge

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the scope of the Wyndham Act of 1903, but the convention, after a violent scene, rejected an amendment in favor of the bill. A resolution approving of the Irish language as a compulsory subject for matriculation at the National University was carried, and a resolution in behalf of woman suffrage was rejected. Mr. Redmond was reëlected to the leadership of the party. Mr. James Farrell, an Irish Nationalist member of parliament, was arrested in December and sent to jail for six months for publishing boycotting notices in his newspaper.—The total **pauperism** of London reached the highest mark for thirty-eight years. On December 12 the rate per thousand inhabitants was 27.2.—Admiral Sir Charles Beresford retired in March from **naval** command, and was succeeded by Sir William Henry May.

AUSTRALIA.—Mr. Fisher, the leader of the Labor Party in the **Federal** House of Representatives, withdrew his support from the government and by means of a coalition with the opposition succeeded in ousting the cabinet on November 10 by a vote of 49 to 13. He thereupon formed a new cabinet of Moderate Laborites with the tentative support of Mr. Deakin, and in March announced a program centering on defence and finance, compulsory military training, the construction of four ocean destroyers and sixteen river destroyers in addition to those already ordered and an estimated increased expenditure of six million dollars to be met by a progressive land tax on estates over $25,000 in value. Parliament passed bills prohibiting the importation of goods wholly or partially prison-made and confirming the selection of Yass-Canberra as the capital of the Commonwealth, but rejected a proposal to purchase a site in Trafalgar Square, London, for the erection of offices for the Australian Agent. A constitutional amendment was considered empowering parliament to secure fair conditions to wage-earners in industries protected by the tariff.—A distinctly anti-federal ministry was formed in **Queensland** in November.—Admiral Sir D. H. Bosanquet was appointed governor of **South Australia** in December, and the ministry was defeated on its proposal for a progressive land-tax.—The ministry of **Victoria** was reconstructed in November by the addition of several conservatives opposed to the demands of the Labor Party, but suffered defeat and dissolved the legislature. The elections in December increased the Labor representation and Sir T. Bent resigned the premiership. Mr. John Murray succeeded in January in forming a coalition cabinet of Ministerialists and Independents against the Laborites. A bill passed the Legislature in November enabling women to vote at state elections.

CANADA.—The eleventh Federal **Parliament** opened on January 20. The government announced that in view of a decrease in revenue the appropriations would be the smallest in several years. Measures were introduced providing for the repression of the payment of secret commissions and gratuities in both public and private business, the construction of a railway from the prairie provinces to Hudson Bay, the assumption of a share in im-

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perial naval defence and more stringent amendments to the immigration laws. A new governmental department of External Affairs was formed in February with the approval of the imperial government to deal with general external relations of the Dominion, such as the correspondence with the imperial government, with the sister colonies, and with the British ambassador at Washington. Parliament in March increased the annual subsidy to the Franco-Canadian steamship line from $75,000 to $200,000 and authorized a government loan to the Grand Trunk Pacific Railway of ten million dollars for ten years in order to complete 970 miles of the prairie section from Winnipeg to Wolf Creek. The bill enlarging Manitoba, Ontario and Quebec was shelved because the first two could not agree as to the proposed boundaries.—Civil service scandals in the marine agencies at Halifax and Quebec were exposed in November and investigated by a special government commission.—Mr. Oliver, minister of the interior, stated in the House of Commons that on January 1 there were 38,258 **Orientals** in Canada distributed as follows: 17,239 Chinese; 15,848 Japanese; 5,171 Indians. The total number who had become British subjects in Canada was 7,442.—Lord Strathcona gave in March a sum of $250,000 for the physical and military training of children in the public schools of the Dominion.—As result of the local-option vote in **Toronto** in January, there was a considerable reduction in the number of licenses.—The province of **Alberta** installed a public telephone system in January, and the premiers of the three prairie provinces conferred at Winnipeg on public ownership of grain elevators.—The legislature of **Manitoba** voted in March to hold a world's fair at Winnipeg in 1912 to commemorate the centenary of the establishment of the Red River Colony by Lord Selkirk.—The act passed annually for ten years by the legislature of **British Columbia** embodying the Natal educational test in immigration regulations, was for the tenth time vetoed by the Dominion government on imperial grounds. The court of appeal also declared unconstitutional the fishery regulations enacted by the legislature. The provincial government determined in March to submit a referendum to the people on the question of local option.

INDIA.—The fiftieth anniversary of Queen Victoria's proclamation transferring the government of India from the East India Company to the Crown, was observed by the viceroy at Jodhpur on November 2. A letter from the king was adversely criticized by all the native press with but one exception.—**Agitation** against British rule has continued and has been accompanied by repressive measures on the part of the government. One very radical newspaper, *Bande Mataram*, was confiscated for seditious writings, and another, the *Yugantar*, removed to the French settlement of Chandarnagar. An unsuccessful attempt to assassinate Sir Andrew Fraser, the lieutenant-governor, was made at Calcutta on November 7. In December, the Vice-regal Council enacted a summary justice bill, providing for the trial of anarchical offenses by a bench of three judges of the High Court without jury, and forbidding the assembling of the Extremist Congress

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at Nagpur.—**Reforms** outlined by Lord Morley late in December promised the abandonment of the principle of permanent official majorities on provincial councils while retaining the principle for the Vice-regal Council, and further guaranteed the representation of minorities in the electoral colleges. The Moderate National Congress, which opened at Madras on December 28, expressed satisfaction with the reform scheme and declared that self-government was an ideal of the future. Many complaints were presented, however, by Mohammedans of inadequate representation in the proposed electoral colleges, and Lord Morley, replying to one of these deputations on January 27, said that he thought separate electoral colleges might be devised for their co-religionists. Several prominent ruling chiefs and hereditary nobles in the Punjab formed in March an association to support the British government. —The British Colonial Secretary appointed in March a special commission to investigate the **emigration** of Indians to the crown colonies.

NEW ZEALAND.—Returns from the parliamentary **elections** on November 17 gave the government 50 seats, the opposition 25, and the independents 5, thus cutting the ministerial majority from 42 to 20. One interesting event of the elections was a notable increase in the no-license vote, largely attributable, according to the Dominion press, to the increased women's vote.—Sir Joseph Ward in January reconstructed his cabinet.—The Federal Council of the **Cook Islands** declined in November to be represented in the New Zealand parliament on the ground that the islands were included in the Dominion only for imperial purposes.

SOUTH AFRICA.—The National Convention, which assembled at Durban on October 12 (see last RECORD, p. 769) and moved to Cape Town on November 23, found difficulty in devising a scheme of **federation** not so much because of jealousies between Dutch and English as because of difference concerning the site of the capital and the relations between Europeans and natives. Agreement was finally reached early in February, and the published constitution provided for more than federal union,—for substantial unification. The Union is to embrace the four colonies, the name of Orange River Colony being changed on the suggestion of Dr. Jameson to Orange Free State Province. The federal government, vested in the sovereign of the United Kingdom, is to consist of a governor-general with a salary of $50,000 a year; an executive council, appointed by the governor; a senate of forty members chosen for ten years, eight appointed by the executive council and eight by each provincial legislature; and a house of assembly of 121 members distributed at the outset as follows: Cape of Good Hope 51, Transvaal 36, Natal 17, Orange Free State 17, automatic redistribution of seats taking place every five years. Members of both houses must be British subjects of European descent resident in the Union for five years. No voter is to be disqualified on the ground solely of race or color, and the native franchise in the Cape Colony is not to be altered except by a two-thirds majority of both houses. In case the two houses

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disagree on any question, they are to come together and decide the difference by a majority of the joint assembly. The provinces, which will correspond to the existing colonies, are to be administered by an administrator appointed by the governor-general, an executive committee and an elective provincial council; they are to have charge of local affairs, but powers not specifically delegated to the provinces are inherent in the federal government. Pretoria is to be the seat of the government offices and Cape Town of parliament. The English and Dutch languages are to be official and enjoy equal privileges. Provision is made for a supreme court. The Union will take over the debts of the existing colonies, and the railways are to be placed under a minister and a permanent advisory commission of three. Constitutional amendments may be adopted by a two-thirds majority of both houses.—The four colonial parliaments met in special session on March 30 to discuss the act of union and to propose amendments. Transvaal and Orange River Colony speedily accepted the act, and the approval of Cape Colony and Natal, although more grudging chiefly on account of the native question, seemed in April to be probable. It was announced that the National Convention would reassemble in May to consider amendments and the parliaments again in June to make final ratification.—A conference was held at Durban in January to promote the formation of a Labor Party similar to that in the United Kingdom.—The trial of Dinuzulu on charges of treason, which was begun in **Natal** on November 23 before three royal commissioners, resulted in March in the sentence of the celebrated native chieftain to four years' imprisonment, dating from his arrest fifteen months previously, and to a fine of $500.—The courts quashed in November the convictions of 54 Indians for re-entering the **Transvaal** after deportation. Mr. Gandhi was convicted in March of violation of the registration act and sentenced to $250 fine or 3 months' imprisonment.

OTHER COLONIES.—The elections in **Newfoundland** on November 2 gave the Bond and Morris parties each eighteen seats, and the premier, Sir Robert Bond, unable to secure the election of his candidate for speaker on the assembling of parliament on February 25, resigned. Mr. Bond was appointed premier and parliament temporarily adjourned. Another general election to break the deadlock seemed inevitable.—The opium commission of the **Straits Settlements** recommended in January the substitution of a government monopoly for private opium farms.

V. CONTINENTAL EUROPE

FRANCE.—Parliament, which has been in session during most of the period under review, has devoted major attention to the budget, the old-age pension bill, the income-tax bill and naval reorganization. The budget was voted in November and December by large majorities. A committee of the senate, which for nearly two years had been considering the Old-Age Pension Bill passed by the Deputies, reported in February that it was impracticable and offered a substitute measure providing for annual pensions

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of 24 dollars to members of the working classes at the age of 65 and over, the money to be supplied by the state and by an annual tax on employers of nine francs for every employee over eighteen years of age and of four and a half francs for every one under eighteen. The Income-Tax Bill, which passed the Deputies on March 9 by 406 votes to 166 and which is expected to receive drastic revision in the Senate, constitutes a complete readjustment of the country's fiscal system by doing away with many of the vexatious and antiquated taxes, like those on windows and doors, and substituting an income-tax proportionate to the annual income of the taxpayer; day laborers are practically exempted, and the taxes upon incomes above $1000 a year are made progressive up to four per cent of the total; one provision bears heavily on foreign residents whose taxes are practically quadrupled, their incomes being calculated at seven times the amount of rent they pay; an important amendment postpones the bill's application until a parallel bill, assuring revenue to the various communes and departments, becomes a law. The ministry foreshadowed an increased deficit and announced in April that plans would be submitted for special temporary taxes until the Income-Tax Bill should become effective. M. Picard's proposals for the reorganization of the navy, involving additional expenditure of forty-five million dollars, were presented in February, but were later cut down to thirty-eight millions. Among the minor acts of parliament was one in February authorizing the Indo-Chinese administration to issue a loan of eleven million dollars for the completion of the Yun-nan Railway. The Deputies voted on December 8 by 330 to 201 to retain the death penalty in the code. The customs committee of the lower house proposed in February a tariff revision, increasing the duties on 866 classes of imports, but the ministry expressed its disapproval.—President Fallières was assaulted by a Nationalist waiter on Christmas Day. The assailant was sentenced in March to four years' imprisonment.—The senatorial **elections** on January 3 in thirty-two departments were distinctly favorable to the Radicals, and M. Clémenceau was reëlected by an increased majority.—The Council of State completed the delimitation of the champagne district in December and decreed that henceforth the sparkling wines from other regions must not be sold as champagne.—Admiral Germinet was removed in December from command of the Mediterranean squadron on account of public utterances to the effect that his vessels were deficient in munitions. The chamber expressed its confidence in the government's **naval** policy by 355 to 142.—In March, a **strike** broke out among the government's postal and telegraph employees which finally ended on the 23rd in a compromise, after causing great public inconvenience. The Deputies passed a vote of confidence in the government by 344 to 138, and voted by 458 to 69 a condemnation of strikes in the public service. It was reported in April that the Council of the Confederation of Labor was energetically organizing government employees and demanding that representation in parliament should be based not on territorial divisions but on organized classes of citizens. M. Clémenceau declared his hostility to any such pro-

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gram.—An interesting decision of the Dijon Court of Appeals, handed down in December in a case which had been pending for nearly two years, allowed damages to parents for **anti-militarist** teaching in the public schools.

GERMANY.—The **emperor's** statements as to his country's relations with Great Britain, published late in October in the London *Telegraph* (see last RECORD, p. 748), aroused keen criticism in Germany and revived the demand for the conduct of foreign affairs exclusively by a ministry responsible to the Reichstag. Notices of interpellations on the emperor's utterances were served in the Reichstag immediately after the assembling on November 4. The debate began on the tenth before a crowded house, including all the ministers and the members of the Bundesrath. Prince Bülow affirmed that the emperor was sincerely desirous of promoting cordial relations with Great Britain and stated his conviction that the emperor would in future, even in private conversation, maintain that reserve which was indispensable in the interest of a uniform policy and of the authority of the crown, and if such were not the case, the imperial chancellor could not assume the responsibility. Motions introduced by the Centre and by the Social Democrats calling upon the government to bring in a bill establishing the parliamentary responsibility of the chancellor were referred to a special commission of twenty-eight members. As the result of a long conference between the emperor and Prince Bülow, an official statement was issued on November 17: "Notwithstanding the exaggerations of public criticism, which he feels to be unjust, the emperor regards it as his highest imperial duty to safeguard the stability of the policy of the empire without prejudice to constitutional responsibilities. Accordingly, his Majesty approved the declarations made by the Imperial Chancellor in the Reichstag and assured Prince Bülow of his continued confidence." The agitation perceptibly lessened, and Prince Bülow declared in the Reichstag on March 30 that he would remain in office as long as he had the confidence of the emperor and the approval of his own conscience.—The principal measures before the **Reichstag** were increased armaments and increased taxes. The government's financial scheme, as outlined on November 4, included a partial state monopoly of spirits, special taxes on other liquors, electricity, gas and advertisements, death duties and an arrangement excluding descendants in the third and more distant degrees from the right of inheritance, such property to go to the state. The scheme aroused opposition not only among the Liberals but among the Agrarians, and the finance committee rejected most of the proposals. Prince Bülow arranged late in March a compromise which seemed to assure the united support of the *bloc* and by which a property tax would be levied on the federated states, each one being left to raise its quota by general taxes on income, property and legacies. The estimates for the navy, published in November, called for a hundred million dollars, an increase of over fifteen millions; and their adoption on March 24, practically without debate, was interpreted by the German press as a great success for Prince Bülow's man-

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agement of the *bloc*. The Reichstag passed a supplementary law in December fixing a maximum ten-hour day for women and children in industrial employment.—The registration of **unemployed** in Berlin on November 17 was 41,468; the number was probably not complete inasmuch as the registration was voluntary.—The budget committee of the **Prussian** Diet rejected in December a proposal for graduated taxation of the profits of joint-stock companies and other trading organizations. As a substitute for this proposal a temporary increase of the income-tax was approved. A motion of the Socialists for franchise reform was rejected on January 26 by 168 votes to 165.

AUSTRIA-HUNGARY.—The annexation of Bosnia and Herzegovina called forth several **Slavic demonstrations.** Riots in Prague on November 29 and December 1 resulted in the proclamation of martial law in that city. In January, 52 Slavic leaders were indicted at Agram for treason for participation in a movement for the separation of Croatia, Slavonia and Bosnia from the Dual Monarchy and their union with Servia, but proceedings were suspended in March.—The **Austrian** chamber, which assembled on January 20, was unable to act on account of the disorder and obstruction of the Czech Radicals, and was closed on February 5. Baron von Bierneth reconstructed the cabinet in the interest of harmony. Serious student riots at Vienna in November followed demonstrations of Italians in behalf of the establishment of an Italian university at Trieste.—Count Andrassy, **Hungarian** minister of the interior, dissolved several trades-unions in January. Labor leaders, who agitated a general strike throughout the country, were arrested.—It was announced in November that the new **Bosnian** Diet would consist of 52 elected and 28 *ex-officio* members; the Serbs would have 27, the Musselmans 34 and the Catholic Croats 19.

ITALY AND THE HOLY SEE.—The **Italian** government, after a protracted debate in the Chamber on its foreign policy, was upheld in December by a vote of 276 to 134.—The earthquake of December 28, which desolated Calabria and Sicily, destroying Messina and Reggio and killing some hundred thousand persons, was a severe blow to the country. In addition to the numerous gifts from individual Italians and from foreigners for the relief of the sufferers, parliament promptly appropriated six million dollars and imposed special taxes which were expected to yield additional eleven millions for the purpose.—Signor Giolitti won a great victory in the parliamentary **elections** on March 7. The returns showed 350 Ministerialists, 103 Extreme Left, 43 Constitutional Opposition and 16 Catholics. It was reported that the last had been elected not as clericals but as friends of united Italy. One of the Catholic deputies, the celebrated priest, Signor Murri, sat with the Socialists on the Extreme Left. The king opened the new parliament on March 24. The principal measures submitted were those dealing with relief to the earthquake sufferers.—The **pope** completed in April the canonization of Joan of Arc.

RUSSIA.—The **Duma** reassembled on October 28. M. Homiakoff was

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reëlected president by 316 votes to 34, the Socialist and Labor members abstaining. A new loan of two hundred and twenty-five million dollars was authorized in December and readily subscribed to in Paris. Amendments to the liquor laws were passed reducing the number of places where spirits can be bought, providing for local option and permitting the prosecution of habitual drunkards in the criminal courts. Debate on an important Agrarian Bill was begun in December, and one clause was passed providing for individual ownership of peasant lands. The Duma rejected at the close of March an appropriation for new battleships.—A woman's congress of eight hundred delegates, held at St. Petersburg in December, adopted resolutions in favor of **woman suffrage**.—Early in March, the government made Vladivostok, hitherto a free port, a closed port of entry. —The Russian cabinet rejected in January a series of **Finnish** demands, including a proposal that questions affecting both the empire and the grand duchy should be submitted to a joint commission of Russian and Finnish representatives. The Finnish Diet, which opened on February 18, was dissolved four days later because the Speaker, in answer to the Tsar's opening message, made reflections on the policy of the Russian government toward Finland. The Senate of the grand duchy thereupon resigned. It was reported in April that the Finnish government was about to take steps to prevent the immigration of Jews from Russia into Finland.

TURKEY.—The sultan opened **parliament** on December 17 with a speech urging internal reorganization and development. Ahmed Riza, a prominent member of the Committee of Union and Progress, was elected president, and the deputies were entertained by the sultan at the Yildiz Kiosk on December 31. Parliament at the outset voted confidence in the ministry of Kiamil Pasha, but friction developed, and a vote of censure on February 13 brought about the resignation of the grand vizier and the succession of Hilmi Pasha, a member of more pronounced liberal views. The new grand vizier formally declared the full recognition by his ministry of its responsibility to the Chamber. The three major problems confronting the government seemed to be the adjustment of the international difficulties in the Balkans, the suppression of reactionary fanaticism especially in the Asiatic provinces and among the Arabian tribesmen and financial reform. The budget presented to parliament in March estimated expenditures at 150 million dollars and revenue at 130 millions.—On April 13, mutinous soldiers of the First Army Corps, which was garrisoning Constantinople, surrounded the parliament house and demanded the deposition of the cabinet headed by Hilmi Pasha. After hours of turmoil and panic in the city, the ministry yielded and Tewfik Pasha was appointed grand vizier. It was believed that the **sultan** had himself organized the *coup* with the idea of regaining his personal power and had been able to take advantage of a feeling among many Moslems that the Young Turk régime had anti-Mohammedan tendencies. The members of parliament and the leaders of the Committee of Union and Progress fled from Constantinople to Salonica,

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where they found support among the Macedonian troops. These Liberal army corps under command of Chefket Pasha then proceeded against the capital. Fighting followed in the streets of Constantinople on April 24, in which some two thousand soldiers were estimated to have been killed, and on the next day the garrison of four thousand Albanians surrendered the Yildiz Kiosk unconditionally and the sultan fell into the hands of the Liberals. Parliament, which had reassembled on April 22 at San Stefano under the protection of the Macedonian troops, undertook an investigation in order to fix the responsibility for the mutiny and directed exemplary punishment of the culpable commanders of the First Army Corps. After fruitless negotiations to provide suitable constitutional guarantees for the future, conducted by Chefket Pasha and the parliament leaders on one side and Tewfik Pasha and the sultan's agents on the other, parliament decreed by unanimous vote on April 27 the deposition of Abdul Hamid II. The sheik-ul-Islam sanctioned the decree in accordance with Mohammedan law; and the heir to the throne, Mohammed Rechad Effendi, a brother of Abdul Hamid, was proclaimed sultan under the title of Mohammed V and took the oath before parliament. Tewfik Pasha temporarily retained the office of grand vizier at the request of the chambers. Large numbers of reactionaries were arrested by the soldiers of Chefket Pasha and imprisoned; and Abdul Hamid was removed under a strong guard to Salonica.—These difficulties of the government at Constantinople occasioned extensive fanatical outbreaks in Cilicia. Several thousand Christians, chiefly Armenians, were killed by Moslems at Adana on April 15; part of the town of Tarsus was burned; and the disturbances quickly spread to Mersina, Ayas and the neighborhood of Alexandretta. Consular advices of April 28 reported that not less than six thousand persons had lost their lives in the massacres of the preceding two weeks throughout the vilayets of Adana and Aleppo. The dispatch of Turkish troops from Constantinople and the arrival of British and French cruisers at Alexandretta had a tranquilizing effect.

OTHER EUROPEAN STATES.—The **Bulgarian** Sobranye, which adjourned on February 13, adopted a budget of about thirty-one million dollars, the largest in the history of the country, and imposed a tax on bachelors over thirty years of age, the proceeds of which are to be applied to educational uses.—The government of **Denmark** introduced in February an extensive scheme of national defence, including land and sea fortifications and twenty torpedo boats. Elections in Iceland in March gave a majority to the party which favored only a personal union with Denmark.—A daughter and heir was born to the queen of the **Netherlands** on April 30.—**Portugal** experienced several changes in the office of premier on account of the difficulty of forming a permanent coalition cabinet. Dr. Pereira de Lima and Senhor Beirao failed in December to form ministries, and that of Senhor Henriques resigned in March. Gen. S. C. de Sousa Telles, who was at one time minister of war, succeeded in forming a new cabinet on

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April 7. Parliament was opened by King Manuel on March 1 and at once authorized a new loan. The government urged additions to the navy of two cruisers and twelve destroyers. At a convention of the party of the *Regenerados* in February, a resolution was passed recognizing state socialism as an ideal of contemporary society. Dom Miguel, pretender to the Portuguese throne, renounced in March his claims and stated that he desired to live peacefully at Lisbon as a private citizen.—A new coalition cabinet was formed in **Servia** in February for national defence with M. Stojan Novakovitch as premier and M. Milovanovitch as minister of foreign affairs. The crown prince, who had played a prominent part in advocating war with Austria (see *supra*, p. 343), renounced the succession to the throne, with the king's permission, at a meeting of the cabinet on March 27, and the next day the king notified the Skupshtina that his second son, Prince Alexander, had become heir-apparent.—The **Spanish** minister of finance announced a surplus of seven million dollars for 1908. The government asked the Chambers to impose a tax on foreign vessels entering Spanish ports. The king and queen inaugurated late in March the new works at the port of Seville, which are to be completed in four years.—The **Swedish** Riksdag opened on January 16. Proposals were submitted for electoral reform and for an increase of the income tax, the malt tax and stamp duties. A bill was passed in February establishing universal suffrage and proportional representation.—Dr. Deucher was elected president of **Switzerland** for 1909.

VI. ASIA AND AFRICA

CHINA.—On November 3, the Dowager Empress's seventy-third birthday, the **Dalai Lama** was given a new title and an annual grant of $5,750 and was authorized to return to Tibet and "observe the ordinances of the suzerain power." He departed for Lhasa on December 21.—The **emperor**, Kwang-Hsu, died on November 14, and the death of the powerful empress-dowager, Tze-Hsi, took place the following day. A valedictory edict, published by the latter, reviewed the events of her rule and referred to the necessity of gradually preparing for the establishment of a constitutional régime. The heir-apparent, Prince Hsuan Tung, who was born February 8, 1906, was enthroned on December 2, the regency being entrusted to Prince Chun. Order prevailed, and an important decree reaffirmed the constitution which had been promulgated on August 27 (see last RECORD, p. 775), but the able administrator and Liberal leader, Yuan Shih hai, was retired in January.—A **naval** department was added to the government in February.

CONGO.—The Belgian government prohibited in February the traffic for four years in firearms and ammunition with the natives in several districts.

EGYPT.—The legislative council met on December 1 to consider the budget, and unanimously approved a motion asking the Khedive's government to prepare a law conferring on the nation the right of effective

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participation in the internal administration of the country.—The violent opposition of most of the Arabic press led in March to a revival of the censorship act of 1881.

MOROCCO.—An amicable arrangement between Mulai Hafid and Abdul Aziz (see *supra*, p. 344) was reached in November, whereby the latter should retain all private inheritance from his father, receive an annual pension of $35,000 and reside at Tangier.—Raisuli was appointed governor of several mountain tribes.—Mulai Mahommed, the elder brother of Mulai Hafid and Abdul Aziz, was proclaimed sultan in December, but the attempted revolution failed and he was made a prisoner of state.

PERSIA.—Little change was reported in the deadlock between the shah and the parliamentarians (see last RECORD, p. 775). After a violent reactionary demonstration at Teheran, the shah promised on November 7 to promulgate a rescript formally abolishing the constitution, but withdrew his promise two weeks later in deference to Russian and British representations. The shah's proposal in December to establish a new Council of State, to consist of fifty appointed members and to have legislative powers, was opposed both by the Constitutionalists and by Great Britain and Russia. Several royalist attempts to dislodge Sata Khan and the parliamentarians at Tabriz failed. On April 25, the shah consented to an indefinite armistice at Tabriz and the entrance of unlimited supplies to the city, which had then for a month been in a state of siege. A Russian expedition under Gen. Snarsky arrived at Tabriz at the close of April and guaranteed the maintenance of order.

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